

SEVENTY-SIXTH DAY

FRIDAY, MAY 18, 2001

PROCEEDINGS

The Senate met at 9:00 a.m. pursuant to adjournment and was called to order by the President.

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

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

Senate Doorkeeper Don Long offered the invocation as follows:

Almighty Lord of all, we beseech You this day to guide every word, thought, and action in this Texas Senate Chamber. Dispel whatever spirit of discord may here arise. Enrich every Senator's heart with that most excellent gift of charity, so that all acts may be full of the spirit of kindness and forbearance, one toward another.

Give each Senator the courage to put into practice those immortal words of Abraham Lincoln in his second inaugural address on March 4, 1865: "With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in." God bless each and every one in this chamber. Amen.

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

MESSAGE FROM THE GOVERNOR

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

Austin, Texas
May 17, 2001

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

On January 30, 2001, I submitted the name of Douglas A. Schwartz of El Paso for appointment to the Real Estate Research Advisory Committee for a term to expire January 31, 2005.

I hereby withdraw his nomination for this committee and request that the Senate return this appointment to me.

Respectfully submitted,

/s/Rick Perry
Governor

MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was filed with the Secretary of the Senate:

OFFICIAL MEMORANDUM
STATE OF TEXAS
OFFICE OF THE GOVERNOR

May 18, 2001
Austin, Texas

MESSAGE

Article 4, Section 14, of the Texas Constitution directs and regulates when and how the Governor can approve or disapprove any bill passed by both houses of the Legislature.

The Legislature has passed **HCR 291** requesting that I return **HB 2218** by Rangel to the Senate for further consideration. In this instance, I have taken no formal action on **HB 2218** and I am agreeing to the request of the Legislature.

While under no obligation to comply with this request, and pursuant to established case law, I hereby return the enrolled copy of **HB 2218** with this message to the Senate for further consideration.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 18th day of May, 2001.

/s/Rick Perry
Governor of Texas

ATTESTED BY:

/s/Henry Cuellar, Ph.D.
Secretary of State

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
May 18, 2001

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

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

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 293, Congratulating Stephen Arthur and Eugenia Marie Gonzalez of Pflugerville on the birth of their son, Christian Alexander Gonzalez.

SB 4, Relating to the administration and use of the Texas Mobility Fund and the issuance of obligations for financing the construction, reconstruction, acquisition, and expansion of state highways and other mobility projects.
(Committee Substitute/Amended)

SB 7, Relating to the period during which a person arrested is required to be taken before a magistrate and to the appointment and compensation of counsel to represent indigent persons accused of crime.
(Committee Substitute/Amended)

SB 45, Relating to hardship exemptions from time limits under the temporary assistance for needy families program.
(Committee Substitute)

SB 133, Relating to the admissibility in a criminal trial of race or ethnicity as a predictor of future criminal behavior.

SB 214, Relating to the statute of limitations for the presentation of certain felony indictments.
(Amended)

SB 233, Relating to parental liability for the conduct of a child.

SB 314, Relating to the continuation and functions of the Texas Department of Banking and the regulation of certain financial institutions and businesses; providing an administrative penalty.
(Committee Substitute/Amended)

SB 328, Relating to the statute of limitations for purposes of prosecuting certain offenses involving injury to a child, elderly individual, or disabled individual.

SB 352, Relating to the collection of solid waste disposal service fees by a county or by certain public or private entities contracting with a county.
(Amended)

SB 354, Relating to the powers of a local government corporation.
(Committee Substitute/Amended)

SB 356, Relating to performance measures for innovative regulatory programs implemented by the Texas Natural Resource Conservation Commission.

SB 367, Relating to ensuring an appropriate care setting for a person with a disability.
(Amended)

SB 437, Relating to the offense of theft of service.
(Amended)

SB 466, Relating to a specialty insurance agent license for persons who sell certain telecommunications equipment.

SB 516, Relating to creating the rural physician relief program.
(Amended)

SB 518, Relating to public school counselors.

(Amended)

SB 563, Relating to the protection of the interest of certain innocent property owners in a criminal asset forfeiture proceeding.

(Amended)

SB 609, Relating to the compensation received by peace officers commissioned by the Department of Public Safety who are required to work on certain holidays.

(Committee Substitute)

SB 616, Relating to the establishment of a medical assistance pilot program for the management of children's asthma.

(Amended)

SB 620, Relating to extension of restrictions imposing regular assessments in certain residential real estate subdivisions.

SB 697, Relating to the regulation of the practice of professional engineering.

(Committee Substitute/Amended)

SB 700, Relating to the suspension of a license for failure to comply with the terms of a court order providing for the possession of or access to a child.

SB 826, Relating to the location of public education schools, programs, and classes.

(Amended)

SB 935, Relating to engaging in the business of making, negotiating, or transacting certain consumer loans on a financial institution's behalf.

SB 1205, Relating to the exemption of certain business enterprises and courses of instruction from proprietary school certification.

(Committee Substitute)

SB 1210, Relating to certain attorneys and law clerks employed by a court.

(Committee Substitute)

SB 1446, Relating to severance payments to superintendents of independent school districts.

SB 1449, Relating to the execution of bonds and the sale of loans by the Veterans' Land Board.

SJR 47, Proposing a constitutional amendment to authorize the legislature to exempt from ad valorem taxation raw cocoa and green coffee that is held in Harris County.

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

PHYSICIAN OF THE DAY

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

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

SENATE CONCURRENT RESOLUTION 61

The President laid before the Senate the following resolution:

WHEREAS, The Legislature of the State of Texas is pleased to recognize Lockheed Martin for the many valuable contributions it has made to the people of this state and to express its unqualified support for future plans to assemble the Joint Strike Fighter at Lockheed Martin Aeronautics in Fort Worth; and

WHEREAS, Lockheed Martin's Texas companies set the standard for excellence in aircraft, missiles, space operations and launch vehicles, information systems, environmental remediation, logistics management, training and technical services, and state and local government services; and

WHEREAS, Lockheed Martin makes vital contributions to the economic well-being of the State of Texas, operating 13 facilities with \$1.2 billion in payroll being distributed to its 19,000 Texas employees; additionally, its business operations generate billions of dollars of revenue for nearly 2,700 Texas suppliers, including 91 small, historically underutilized, and women-owned businesses; and

WHEREAS, An outstanding corporate citizen of Texas, Lockheed Martin has contributed more than \$3 million in charitable donations, plus countless hours of employee volunteer time to state and local educational, cultural, and service organizations; and

WHEREAS, Lockheed Martin Aeronautics Company, located in Fort Worth, Texas, is celebrating its 60th anniversary in 2001 as the premiere military aircraft manufacturer in the world; over the course of its history in Fort Worth, Lockheed Martin Aeronautics has produced 3,120 F-16s, 562 F-111s, 116 B-58s, 385 B-36s, 124 B-32s, and 3,034 B-24s, a total of 7,341 military aircraft; and

WHEREAS, A fifth generation fighter aircraft for all three military services known as the Joint Strike Fighter will replace the F-15s, F-16s, A-10s, AV-8s, and F-18s in service; the Department of Defense is scheduled to purchase 3,000 of the aircraft, while the international market could be an additional 3,000; and

WHEREAS, Production of the Joint Strike Fighter is expected to further the United States' dominance of the world export fighter market for the next 30 years, continuing the legacy of the F-16 Fighting Falcon, the greatest export defense success of this generation; and

WHEREAS, The production of the Joint Strike Fighter, which will generate \$200 billion in sales, will be the last major fighter contract awarded until the year 2040; and

WHEREAS, The assembly of the Joint Strike Fighter will begin in 2008 under the existing timetable, and the project would extend the life of the 60-year-old Fort Worth plant, as the production of the F-16 Fighting Falcon will conclude with the close of this decade; and

WHEREAS, The Joint Strike Fighter project could potentially create as many as 2,000 engineering, manufacturing, and development jobs, 8,000 full production jobs, and 40,000 jobs for subcontractors; and

WHEREAS, Among those hoping to assemble the Joint Strike Fighter are companies with sites in Missouri and California; the Secretary of Defense has been requested by Congress to submit a report on production alternatives for the Joint Strike Fighter Program and the effects on the tactical fighter aircraft industrial base of each alternative considered; and

WHEREAS, California's power shortages will not be rectified for some time to come, rendering it unable to guarantee adequate supplies of affordable electricity for production, while the State of Texas should have over 20 percent excess electricity capacity in the future due to power plant construction and local availability of natural gas combined with a streamlined application process for additional power plants; and

WHEREAS, Since 1941, the Lockheed Martin Aeronautics Company in Fort Worth has provided hundreds of thousands of Texans with quality, well-paying employment; a company that has earned an unequalled reputation for military aircraft construction, Lockheed Martin Aeronautics Company will continue to be the premiere fighter aircraft manufacturer in the world, guaranteeing our nation's defense and continuing the proud heritage of military aviation in Texas; now, therefore, be it

RESOLVED, That the 77th Legislature of the State of Texas hereby fully support the selection of Lockheed Martin Aeronautics in Fort Worth as the site for the Joint Strike Fighter construction program; and, be it further

RESOLVED, That a copy of this resolution be prepared to express the admiration and high regard the Texas Legislature holds for Lockheed Martin.

MONCRIEF

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 viva voce vote.

GUESTS PRESENTED

Senator Moncrief was recognized and introduced to the Senate Dwain Mayfield, Vice-president of Strategic Initiatives; Eric Fox, Senior Director of Governmental Affairs; and Emily Moss, Director of Governmental Affairs; all of Lockheed Martin Aeronautics Company in Fort Worth.

The Senate welcomed its guests.

SENATE RESOLUTION 1100

Senator Lucio offered the following resolution:

WHEREAS, Every session for the past 24 years, members of the Texas Senate have found common ground in the conviction that they were privileged to work with the finest legislative secretary in the entire United States of America, and when Betty King, secretary of this chamber, retires for good at the end of the 77th Regular Session, she will take with her the enduring gratitude of a host of Texas senators and leave behind a legacy of service, dedication, and friendship that is already legendary far beyond the Texas Capitol; and

WHEREAS, Introduced to the legislature at the age of 14, when she served as an honorary page, Mrs. King returned to work for the senate after attending The University of Texas at Austin; she gained increasing experience as a staff member for various committees, for Senator Ottis Locke, and for President Pro Tempore Culp Krueger, and became assistant journal clerk in 1967; in 1973 she was elevated to the post of journal clerk, and in 1977 to the office of secretary of the senate, the highest administrative position in the chamber; and

WHEREAS, After serving in that capacity with unexampled graciousness, efficiency, and diplomacy in 12 successive legislatures, the longest term of any person to hold the office, Mrs. King announced her decision to retire at the end of 2000; though her retirement was more than well-earned, the prospect met with such universal dismay that she ultimately acceded to pleas that she continue for still one more session; and

WHEREAS, On April 26, 2001, the Texas Senate honored Mrs. King with the passage of Senate Resolution 590, which testified to her illustrious record of service, both to this chamber and to many civic, humanitarian, and cultural organizations; the resolution also provided that the Lieutenant Governor's Committee Room should be renamed the Betty King Committee Room, in recognition of all she has done for the senate and for its members "as friend, confidante, and mentor"; and

WHEREAS, Betty King's contributions to the work of the Texas Senate have truly been immeasurable, and her friendship one of the surest and brightest lights in this legislative arena; now, therefore, be it

RESOLVED, That the Senate of the 77th Texas Legislature hereby honor Betty King for her more than 53 years of exemplary public service and for the model she has set of dignity, honor, professionalism, and humanity in discharging the responsibilities of the office of secretary of the senate; and, be it further

RESOLVED, That the Betty King Public Service Award be established, to be conferred before sine die of every regular legislative session, beginning with the 77th Legislature, and to be bestowed on one legislative and one administrative employee of the Texas Senate who exhibit exceptional commitment and dedication to this chamber; and, be it further

RESOLVED, That recipients of the award be chosen by the Betty King Public Service Award Commission, to be composed of the lieutenant governor, the president pro tempore, the chairman of the Senate Administration Committee, the secretary of the senate, and the senate sergeant at arms; and, be it further

RESOLVED, That an official copy of this resolution be prepared for Betty King as an expression of highest esteem and affection by the Texas Senate.

LUCIO
BROWN
HARRIS
MADLA

The resolution was read.

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

On motion of Senator Lucio, the resolution was adopted by a rising vote of the Senate.

BILLS AND RESOLUTIONS SIGNED

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

SB 12, SB 140, SB 148, SB 170, SB 236, SB 274, SB 275, SB 285, SB 368, SB 429, SB 433, SB 453, SB 477, SB 535, SB 542, SB 572, SB 584, SB 587, SB 591, SB 596, SB 647, SB 649, SB 651, SB 673, SB 702, SB 707, SB 714,

SB 757, SB 772, SB 790, SB 850, SB 873, SB 877, SB 904, SB 940, SB 962, SB 990, SB 1002, SB 1015, SB 1043, SB 1057, SB 1061, SB 1146, SB 1207, SB 1213, SB 1262, SB 1300, SB 1304, SB 1376, SB 1394, SB 1491, SB 1539, SB 1561, SB 1563, SB 1588, SB 1667, SB 1671, SB 1707, SB 1710, SB 1735, SB 1772, SB 1799, SB 1806, SB 1810, SB 1811, SB 1814, SCR 22, SCR 23, SCR 50, SCR 64.

SENATE RESOLUTION 842

Senator Truan offered the following resolution:

WHEREAS, The Texas Senate takes pride in joining the citizens of Texas and of the United States in recognizing their incalculable debt to the nation's military personnel who have served valiantly throughout the country's history; and

WHEREAS, The efforts and sacrifices of these brave military people have secured the blessings of liberty for countless Americans over many generations, and the month of May is strongly associated with the remembrance of these courageous men and women; and

WHEREAS, A special day was selected after World War I to pay tribute to all Americans who gave their lives for their country; each year, citizens of Texas and the United States have gathered on Memorial Day to recognize the noble ideals of duty, honor, and patriotism; and

WHEREAS, Charged with maintaining the nation's security and prepared to do their utmost to defend their country and the cause of freedom, the nation's men and women in the armed services serve at their posts every day of the year, at home and throughout the world; and

WHEREAS, Having long distinguished themselves in the annals of the armed forces, Texans and other fellow citizens of the United States of America continue to uphold the tradition of gallantry and integrity established by the legions who have preceded them; and

WHEREAS, Consequently, it is fitting that all citizens pay tribute to the country's past and present members of the United States military services; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby recognize May, 2001, as Remembrance, Armed Forces, and Veteran Appreciation Month in the State of Texas and urge all Texans to honor our country's military personnel for their vital contributions to freedom and democracy; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the Military Order of the Purple Heart of Texas as an expression of the highest esteem from the Texas Senate.

The resolution was again read.

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

The resolution was previously adopted on Tuesday, May 1, 2001.

GUESTS PRESENTED

Senator Truan was recognized and introduced to the Senate Rufus Dye and Bob Lichtenberger.

The Senate welcomed its guests.

(Senator Staples in Chair)

HOUSE CONCURRENT RESOLUTION 284

The Presiding Officer laid before the Senate the following resolution:

HCR 284, Instructing the enrolling clerk of the house to make technical corrections in **HB 1245**.

HARRIS

The resolution was read.

Senator Harris offered the following amendment to the resolution:

Floor Amendment No. 1

Amend **HCR 284**, on page 1, line 24, by striking "on or after" and substituting "before, on, or after".

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

HCR 284 as amended was considered immediately and was adopted by a viva voce vote.

(President in Chair)

SENATE BILL 1358 WITH HOUSE AMENDMENTS

Senator Armbrister called **SB 1358** 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.

Floor Amendment No. 1

Amend **SB 1358** in SECTION 5 of the bill by striking Section 901.006, Occupations Code, as amended by the bill (house committee printing, page 9, lines 20-24).

Floor Amendment No. 1 on Third Reading

Amend **SB 1358** on third reading, in SECTION 41 of the bill, following Subsection (f) of that section (House Committee Printing page 51, after line 25), by adding the following:

(g) The changes in law made by this Act are not intended to authorize the practice of law by a person who is not an attorney licensed to practice law in this state.

The amendments were read.

On motion of Senator Armbrister, the Senate concurred in the House amendments to **SB 1358** by a viva voce vote.

SENATE BILL 575 WITH HOUSE AMENDMENT

Senator Staples called **SB 575** 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 575** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to applicability of the Texas Youth Camp Safety and Health Act to a private or independent institution of higher education.

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

SECTION 1. Chapter 141, Health and Safety Code, is amended by adding Section 141.0021 to read as follows:

Sec. 141.0021. EXEMPTION. This chapter does not apply to a facility or program operated by or on the campus of an institution of higher education or a private or independent institution of higher education as defined by Section 61.003, Education Code.

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

The amendment was read.

Senator Staples moved to concur in the House amendment to **SB 575**.

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

Present-not voting: Mr. President.

SENATE BILL 1318 WITH HOUSE AMENDMENT

Senator Staples called **SB 1318** 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 1318** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of certain health spas.

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

SECTION 1. Section 702.253, Occupations Code, is amended to read as follows:

Sec. 702.253. ADJUDICATION ON PRO RATA BASIS. [~~(a)~~] If the total amount of actual financial losses computed under Section 702.252 for all claims filed under Section 702.251 exceeds the amount of available security, the secretary of state shall reduce the amount of each recovery under Section 702.252 on a pro rata basis and shall compute the amount of each recovery by:

(1) dividing the amount of available security by the total amount of actual financial losses computed under Section 702.252 for all claims; and

(2) multiplying the results computed under Subdivision (1) by the amount of the recovery.

~~[(b) For purposes of this section, the amount of available security is computed by subtracting the costs incurred in publishing notice under Section 702.452 from the amount of the security filed or posted for the health spa.]~~

SECTION 2. Section 702.254, Occupations Code, is amended to read as follows:

Sec. 702.254. CLAIM BARRED. The secretary of state may not consider a claim filed under Section 702.251 if the claim is received later than the 90th day after the ~~[first]~~ date notice is first posted ~~[published]~~ under Section 702.452.

SECTION 3. Section 702.452, Occupations Code, is amended to read as follows:

Sec. 702.452. NOTICE OF CLOSED HEALTH SPA. ~~(a) Not later than the third [45th] day after the date [the secretary of state discovers that] a health spa is closed, the certificate holder [secretary] shall contemporaneously:~~

~~(1) post, at the health spa location [publish for two consecutive Saturdays and Sundays in a newspaper of general circulation in the county in which the health spa is located, or the county nearest to the location of the health spa], a notice stating:~~

~~(A) that the health spa is closed;~~

~~(B) that a member of the health spa may, not later than the 90th day after the date the [first] notice is first posted [published], file with the secretary of state a claim to recover actual financial loss suffered by the member as a result of the health spa closing; and~~

~~(C) the procedures for perfecting a security claim; and~~

~~(2) notify the secretary of state of the health spa closing and the date that the notice was first posted.~~

~~(b) The notice posted under Subsection (a)(1) must be:~~

~~(1) at least 8-1/2 by 11 inches in size;~~

~~(2) posted in a place that is readily accessible to the general public during the former operating hours of the health spa; and~~

~~(3) posted continuously for at least 14 days.~~

~~(c) If the certificate holder fails to post the notice required by Subsection (a)(1) within the time specified, the secretary of state, not later than the 30th day after the date the secretary discovers that a health spa is closed, shall post the notice required under Subsection (a)(1).~~

~~(d) After receiving a notice under Subsection (a)(2) or otherwise discovering that a health spa is closed, the secretary of state shall post on the secretary of state's Internet website a notice containing the information specified in Subsection (a)(1). The notice must be posted continuously for at least 30 days.~~

~~(e) The secretary of state shall, not later than the 10th day after the date the secretary receives notice or otherwise discovers that a health spa is closed, notify the appropriate surety company or obligor of the administrative proceedings pending under Subsection (a)(1) [Subdivision (4)].~~

SECTION 4. Section 702.453, Occupations Code, is repealed.

SECTION 5. This Act takes effect September 1, 2001, and applies only to a health spa that closes on or after that date. A health spa that closes before that date is governed by the law in effect immediately before September 1, 2001, and the former law is continued in effect for that purpose.

The amendment was read.

On motion of Senator Staples, the Senate concurred in the House amendment to **SB 1318** by a viva voce vote.

SENATE BILL 789 WITH HOUSE AMENDMENTS

Senator Moncrief called **SB 789** 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 789** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation and reimbursement of telemedicine medical services.

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

SECTION 1. Section 531.0216, Government Code, is amended to read as follows:

Sec. 531.0216. PARTICIPATION AND REIMBURSEMENT OF TELEMEDICINE MEDICAL SERVICE PROVIDERS UNDER MEDICAID. (a) The commission by rule shall develop and implement a system to reimburse providers of services under the state Medicaid program for services performed using telemedicine medical services.

(b) In developing the system, the commission by rule shall:

(1) review programs and pilot projects in other states to determine the most effective method for reimbursement;

(2) establish billing codes and a fee schedule for services; ~~and~~

(3) provide for an approval process before a provider can receive reimbursement for services;

(4) consult with the Texas Department of Health and the telemedicine advisory committee to develop a procedure to deny reimbursement for a medical service that, based on credible clinical evidence, is shown to be medically inappropriate;

(5) establish pilot programs in designated areas of this state under which the commission, in administering government-funded health programs, may reimburse a health professional participating in the pilot program for telehealth services authorized under the licensing law applicable to the health professional; and

(6) establish a separate provider identifier for telemedicine medical services providers.

(c) The commission shall encourage physicians, teaching hospitals, small rural hospitals, federally qualified health centers, and state-owned health care facilities to participate as telemedicine medical service providers in the health care delivery system. The commission may not require that a service be provided to a patient through telemedicine medical services when the service can reasonably be provided by a physician through a face-to-face consultation with the patient in the community in which the patient resides or works. This subsection does not prohibit the authorization of the provision of any service to a patient through telemedicine medical services at the patient's request.

(d) Subject to Section 153.004, Occupations Code [5.11, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes)], the commission may adopt rules as necessary to implement this section.

(e) The commission may not reimburse a health care facility for telemedicine medical services provided to a Medicaid recipient unless the facility complies with the minimum standards adopted under Section 531.02161.

(f) Not later than December 1 of each even-numbered year, the commission shall report to the speaker of the house of representatives and the lieutenant governor on the effects of telemedicine medical services on the Medicaid program in the state, including the number of physicians and health professionals using telemedicine medical services, the geographic and demographic disposition of the physicians and health professionals, the number of patients receiving telemedicine medical services, the types of services being provided, and the cost of utilization of telemedicine medical services to the program.

(g) In this section:

(1) "Telehealth service" has the meaning assigned by Section 57.042, Utilities Code.

(2) "Telemedicine medical service"[-,"telemedicine"] has the meaning assigned by Section 57.042, Utilities Code.

SECTION 2. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02161 to read as follows:

Sec. 531.02161. TELEMEDICINE TECHNOLOGY STANDARDS. (a) In this section, "telemedicine medical service" has the meaning assigned by Section 57.042, Utilities Code.

(b) The commission and the Telecommunications Infrastructure Fund Board by joint rule shall establish and adopt minimum standards for an operating system used in the provision of telemedicine medical services by a health care facility participating in the state Medicaid program, including standards for electronic transmission, software, and hardware.

(c) In developing standards under this section, the commission and the Telecommunications Infrastructure Fund Board shall address:

(1) authentication and authorization of users;

(2) authentication of the origin of information;

(3) the prevention of unauthorized access to the system or information;

(4) system security, including the integrity of information that is collected, program integrity, and system integrity;

(5) maintenance of documentation about system and information usage;

(6) information storage, maintenance, and transmission; and

(7) synchronization and verification of patient profile data.

SECTION 3. Section 531.0217, Government Code, is amended to read as follows:

Sec. 531.0217. REIMBURSEMENT FOR CERTAIN MEDICAL CONSULTATIONS. (a) In this section:

(1) "Health professional" means:

(A) a physician;

(B) an individual who is:

(i) licensed or certified in this state to perform health care services; and

(ii) authorized to assist a physician in providing telemedicine medical services that are delegated and supervised by the physician; or

~~(C) a licensed or certified health professional acting within the scope of the license or certification who does not perform a telemedicine medical service [an advanced nurse practitioner, an allied health professional, a mental health professional, a physician, or a physician assistant who is licensed in this state].~~

~~(2) "Physician" means a person licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code. ["Rural county" means a county that:~~

~~[(A) has a population of 50,000 or less; or~~

~~[(B) contains an area that was not designated as an urban area by the United States Bureau of the Census according to the 1990 federal census and does not have within the boundaries of the county a hospital that:~~

~~[(i) is licensed under Chapter 241, Health and Safety Code; and~~

~~[(ii) has more than 100 beds.]~~

~~(3) "Telehealth service" has the meaning assigned by Section 57.042, Utilities Code.~~

~~(4) "Telemedicine medical service" has the meaning assigned by Section 57.042, Utilities Code. ["Rural health facility" means a health facility that is located in a rural county and at least 30 miles from any accredited medical school or any teaching hospital affiliated with an accredited medical school and that is:~~

~~[(A) a licensed, nonprofit hospital;~~

~~[(B) a health clinic that is affiliated with:~~

~~[(i) an accredited medical school;~~

~~[(ii) a teaching hospital that is affiliated with an accredited medical school;~~

~~[(iii) a hospital described by Paragraph (C); or~~

~~[(iv) a federally qualified health center, as defined by 42 U.S.C. Section 1396d(1)(2)(B), as amended; or~~

~~[(C) a hospital that:~~

~~[(i) is licensed under Chapter 241, Health and Safety Code;~~

~~[(ii) is owned or operated by a municipality, county, hospital district, or hospital authority; and~~

~~[(iii) provides inpatient or outpatient services.~~

~~[(4) "Telemedical consultation" means a medical consultation for purposes of patient diagnosis or treatment that requires the use of advanced telecommunications technology, including:~~

~~[(A) compressed digital interactive video, audio, or data transmission;~~

~~[(B) clinical data transmission via computer imaging for teleradiology or telepathology; and~~

~~[(C) other technology that facilitates access in rural counties to health care services or medical specialty expertise.]~~

~~(b) The commission by rule shall require each health and human services agency that administers a part of the Medicaid program to provide Medicaid reimbursement for a telemedicine medical service initiated or [telemedical consultation] provided by a physician [licensed in this state who practices in:~~

~~[(1) a rural health facility;~~

~~[(2) an accredited medical school; or~~

~~[(3) a teaching hospital that is affiliated with an accredited medical school].~~

~~(c) The commission shall ensure that reimbursement is provided only for a telemedicine medical service initiated or [consultation] provided by a physician [described in Subsection (b) to a health professional who practices in a rural county].~~

(d) The commission shall require reimbursement for a telemedicine medical service [~~telemedical consultation~~] at the same rate as the Medicaid program reimburses for a comparable in-person medical service [~~consultation~~]. A request for reimbursement may not be denied solely because an in-person medical service [~~consultation~~] between a physician and a patient did not occur.

(e) A health care facility that receives reimbursement under this section for a telemedicine medical service [~~consultations~~] provided by a physician [~~physicians~~] who practices [~~practice~~] in that facility or [~~and~~] a health professional who participates in a telemedicine medical service [~~obtains consultations~~] under this section shall establish quality of care protocols and patient confidentiality guidelines to ensure that the telemedicine medical service meets [~~telemedical consultations meet~~] legal requirements and acceptable patient care standards.

(f) The commission may not require a telemedicine medical service [~~telemedical consultation~~] if an in-person consultation with a physician is reasonably available where the patient resides or works. The commission shall require facilities and providers of telemedicine medical services to make a good faith effort to identify and coordinate with existing providers to preserve and protect existing health care systems and medical relationships in an area.

(g) If a patient receiving a telemedicine medical service has a primary care physician or provider and consents to the notification, the commission shall require that the primary care physician or provider be notified of the telemedicine medical service for the purpose of sharing medical information.

(h) The commission in consultation with the Texas State Board of Medical Examiners shall monitor and regulate the use of telemedicine medical services to ensure compliance with this section. In addition to any other method of enforcement, the commission may use a corrective action plan to ensure compliance with this section.

(i) [~~(g)~~] The Texas State Board of Medical Examiners, in consultation with the commission, as appropriate, may adopt rules as necessary to:

(1) ensure that appropriate care, including quality of care, is provided to patients who receive telemedicine medical services [~~that are provided through a telemedical consultation~~]; [~~and~~]

(2) prevent abuse and fraud through the use of telemedicine medical services [~~telemedical consultations~~], including rules relating to filing of claims and records required to be maintained in connection with telemedicine;

(3) establish supervisory requirements for a service delegated to and performed by an individual who is not a physician; and

(4) define those situations when a face-to-face consultation with a physician is required after a telemedicine medical service.

(j) [~~(h)~~] The commissioner shall establish an advisory committee to coordinate state telemedicine efforts and assist the commission in:

(1) evaluating [~~developing~~] policies for telemedicine medical services under Section 531.0216 and this section;

(2) monitoring the types of programs receiving reimbursement under this section; and

(3) coordinating the activities of state agencies interested in the use of telemedicine medical services [~~telemedical consultations under this section~~].

(k) This section does not affect any requirement relating to:

- (1) a federally qualified health center;
- (2) a rural health clinic; or
- (3) physician delegation of the authority to carry out or sign prescription drug orders to an advanced practice nurse or physician assistant.

SECTION 4. Subchapter D, Chapter 62, Health and Safety Code, is amended by adding Section 62.157 to read as follows:

Sec. 62.157. TELEMEDICINE MEDICAL SERVICES. (a) In providing covered benefits to a child, a health plan provider must permit benefits to be provided through telemedicine medical services in accordance with policies developed by the commission.

(b) The policies must provide for:

(1) the availability of covered benefits appropriately provided through telemedicine medical services that are comparable to the same types of covered benefits provided without the use of telemedicine medical services; and

(2) the availability of covered benefits for different services performed by multiple health care providers during a single session of telemedicine medical services, if the commission determines that delivery of the covered benefits in that manner is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services, including the costs of transportation and lodging and other direct costs.

(c) In developing the policies required by Subsection (a), the commission shall consult with the telemedicine advisory committee.

(d) In this section, "telemedicine medical service" has the meaning assigned by Section 57.042, Utilities Code.

SECTION 5. Section 1, Article 21.53F, Insurance Code, as added by Section 1, Chapter 880, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

Sec. 1. DEFINITIONS. In this article:

(1) "Health benefit plan" means a plan described by Section 2 of this article.

(2) "Health professional" means:

(A) a physician;

(B) an individual who is:

(i) licensed or certified in this state to perform health care services; and

(ii) authorized to assist a physician in providing telemedicine medical services that are delegated and supervised by the physician; or

(C) a licensed or certified health professional acting within the scope of the license or certification who does not perform a telemedicine medical service.

(3) "Physician" means a person licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code.

(4) "Telehealth service" has the meaning assigned by Section 57.042, Utilities Code.

(5) "Telemedicine medical service" has the meaning assigned by Section 57.042, Utilities Code. ["Telemedicine" means the use of interactive audio, video, or other electronic media to deliver health care. The term includes the use of electronic media for diagnosis, consultation, treatment, transfer of medical data, and medical education. The term does not include services performed using a telephone or facsimile machine.]

SECTION 6. Section 3, Article 21.53F, Insurance Code, as added by Section 1, Chapter 880, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

Sec. 3. COVERAGE FOR TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES. (a) A health benefit plan may not exclude a telemedicine medical service or a telehealth service from coverage under the plan solely because the service is [~~provided through telemedicine and~~] not provided through a face-to-face consultation.

(b) Benefits [~~for a service provided through telemedicine~~] required under this article may be made subject to a deductible, copayment, or coinsurance requirement. A deductible, copayment, or coinsurance applicable to a particular service provided through telemedicine medical services or telehealth services may not exceed the deductible, copayment, or coinsurance required by the health benefit plan for a comparable medical [the same] service provided through a face-to-face consultation.

SECTION 7. Section 4, Article 21.53F, Insurance Code, as added by Section 1, Chapter 880, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

Sec. 4. INFORMED CONSENT. A treating physician or [~~other~~] health professional [care provider] who provides or facilitates the use of telemedicine medical services or telehealth services shall ensure that the informed consent of the patient, or another appropriate person with authority to make health care treatment decisions for the patient, is obtained before telemedicine medical services or telehealth services are provided [~~through telemedicine~~].

SECTION 8. Section 5, Article 21.53F, Insurance Code, as added by Section 1, Chapter 880, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

Sec. 5. CONFIDENTIALITY. A treating physician or [~~other~~] health professional [care provider] who provides or facilitates the use of telemedicine medical services or telehealth services shall ensure that the confidentiality of the patient's medical information is maintained as required by Chapter 159, Occupations Code [Section 5.08, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes)], or other applicable law.

SECTION 9. Section 6(b), Article 21.53F, Insurance Code, as added by Section 1, Chapter 880, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

(b) The Texas State Board of Medical Examiners, in consultation with the commissioner, as appropriate, may adopt rules as necessary to:

(1) ensure that appropriate care, including quality of care, is provided to patients who receive telemedicine medical services [~~that are provided through telemedicine~~]; [~~and~~]

(2) prevent abuse and fraud through use of telemedicine medical services, including rules relating to filing of claims and records required to be maintained in connection with telemedicine medical services;

(3) ensure adequate supervision of health professionals who are not physicians and who provide telemedicine medical services;

(4) establish the maximum number of health professionals who are not physicians that a physician may supervise through a telemedicine medical service; and

(5) require a face-to-face consultation between a patient and a physician providing a telemedicine medical service within a certain number of days following an initial telemedicine medical service only if the physician has never seen the patient.

SECTION 10. Section 153.004, Occupations Code, is amended to read as follows:

Sec. 153.004. RULES REGARDING TELEMEDICINE MEDICAL SERVICES.

(a) In consultation with the Health and Human Services Commission and the commissioner of insurance, the board may adopt rules as necessary to:

(1) ensure that appropriate care is provided to Medicaid and Medicare patients who receive telemedicine medical services [~~that are provided through telemedicine~~]; and

(2) prevent abuse and fraud in the use of telemedicine medical services for Medicaid and Medicare patients.

(b) The rules adopted under Subsection [~~Section~~] (a)(2) may include rules relating to filing of claims and records required to be maintained in relation to telemedicine medical services.

SECTION 11. Section 57.042, Utilities Code, is amended by amending Subdivision (11) and adding Subdivision (12) to read as follows:

(11) "Telehealth service" means a health service, other than a telemedicine medical service, delivered by a licensed or certified health professional acting within the scope of the health professional's license or certification who does not perform a telemedicine medical service that requires the use of advanced telecommunications technology, other than by telephone or facsimile, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

(C) other technology that facilitates access to health care services or medical specialty expertise.

(12) "Telemedicine medical service" means a health care service initiated by a physician or provided by a health professional acting under physician delegation and supervision for purposes of patient assessment by a health professional, diagnosis or consultation by a physician, treatment, or the transfer of medical data, that requires the use of advanced telecommunications technology, other than by telephone or facsimile, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture; and

(C) other technology that facilitates access to health care services or medical specialty expertise[:

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

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

SECTION 12. Section 57.045, Utilities Code, is amended by adding Subsection (e) to read as follows:

(e) The board shall establish an assistance program to provide education concerning the telecommunications infrastructure fund and to facilitate access to funds and programs under this subchapter by health care facilities and by physicians licensed to practice medicine in this state. The assistance program must include a toll-free telephone number and provide access to information through the Internet.

SECTION 13. Section 57.046(b), Utilities Code, is amended to read as follows:

(b) The board shall use money in the qualifying entities account for any purpose authorized by this subchapter, including:

- (1) equipment;
- (2) wiring;
- (3) material;
- (4) program development;
- (5) training;
- (6) installation costs; ~~and~~
- (7) a statewide telecommunications network; ~~and~~
- (8) funding an automated system to integrate client services and eligibility requirements for health and human services across agencies.

SECTION 14. Sections 57.047(a) and (b), Utilities Code, are amended to read as follows:

- (a) The board may award a grant to a project or proposal that:
- (1) provides equipment and infrastructure necessary for:
 - (A) distance learning;
 - (B) an information sharing program of a library; ~~or~~
 - (C) telemedicine medical services; ~~or~~
 - (D) telehealth services;
 - (2) develops and implements the initial or prototypical delivery of a course or other distance learning material;
 - (3) trains teachers, faculty, librarians, or technicians in the use of distance learning or information sharing materials and equipment;
 - (4) develops a curriculum or instructional material specially suited for telecommunications delivery;
 - (5) provides electronic information; or
 - (6) establishes or carries out an information sharing program.
- (b) The board may award a loan to a project or proposal to acquire equipment needed for distance learning and telemedicine medical service projects.

SECTION 15. Subchapter C, Chapter 57, Utilities Code, is amended by adding Section 57.0475 to read as follows:

Sec. 57.0475. ELIGIBILITY FOR GRANTS TO HEALTH CARE FACILITIES.
(a) The board may award a grant under Section 57.047(a)(1)(C) only to a health care facility that:

- (1) is a hospital or other entity, including a health clinic, that:
 - (A) is supported by local or regional tax revenue;
 - (B) is a certified nonprofit health corporation under federal law; or
 - (C) is an ambulatory health care center; or
- (2) meets the criteria adopted by the board and the Health and Human Services Commission under Subsection (b).

(b) The board and the Health and Human Services Commission shall jointly adopt rules prescribing the criteria a health care facility not described by

Subsection (a)(1) must meet to be eligible to receive a grant under Section 57.047(a)(1)(C). In determining the criteria, the board and commission shall prioritize health care facilities based on:

(1) the amount of charity care provided by each facility during the year preceding the year in which the facility applies for a grant; and

(2) the number of Medicaid patients and patients enrolled in the state child health plan treated by each facility during the year preceding the year in which the facility applies for a grant.

(c) The criteria adopted under Subsection (b) must provide that a health care facility is not eligible to receive a grant under Section 57.047(a)(1)(C) if the health care facility did not provide any charity care or treat any patients described by Subsection (b)(2) during the year preceding the year in which the facility applies for a grant.

SECTION 16. Section 58.253(a), Utilities Code, is amended to read as follows:

(a) On customer request, an electing company shall provide private network services to:

- (1) an educational institution;
- (2) a library;
- (3) a nonprofit telemedicine center;
- (4) a public or not-for-profit hospital;

(5) a project that would have been eligible to be funded by the telecommunications infrastructure fund under Subchapter C, Chapter 57, as that subchapter existed on January 1, 2001; or

(6) a legally constituted consortium or group of entities listed in this subsection.

SECTION 17. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.053 to read as follows:

Sec. 32.053. HOME TELEMEDICINE PILOT PROGRAM. (a) The Health and Human Services Commission shall establish a pilot program under which certain recipients of medical assistance receive, in addition to other home health care services for which the recipients are eligible, home health care services through home telemonitoring systems located in the recipients' homes.

(b) The commission shall implement the program in each of the following areas:

- (1) a rural area;
- (2) an urban area;
- (3) a medically underserved area; and
- (4) an area that adjoins this state's international border.

(c) The commission may reimburse a home and community support services agency participating in the program for services provided by the agency through home telemonitoring systems in an amount not to exceed \$300 a month for each home at which services are provided.

(d) The commission shall adopt eligibility criteria for the program. The criteria must:

(1) require that a program participant:

(A) be:

(i) diagnosed with a chronic illness, including hypertension, congestive heart failure, diabetes mellitus, chronic obstructive pulmonary disease, or a chronic wound;

(ii) diagnosed with depression, if it is secondary to a chronic illness; or

(iii) in need of post-hospitalization care or care related to receipt of an organ transplant, regardless of whether the care is needed before or after the transplant;

(B) be able to use home telemonitoring system equipment or be assisted by a regular caregiver who is willing and able to use that equipment;

(C) provide written consent to receipt of home health care services through a home telemonitoring system; and

(D) be under the care of a physician who consents to the participant's receipt of home health care services through a home telemonitoring system; and

(2) prohibit a recipient of medical assistance from participating in the program if the recipient:

(A) is diagnosed with a terminal condition and expected to live for less than six months; or

(B) requires daily, in-person, home health care visits or invasive procedures.

(e) The commission shall determine home health care services to be provided to program participants through a home telemonitoring system. Home health care services provided through the system may include:

(1) educating a program participant regarding self-care and preventive health;

(2) monitoring a program participant's compliance with medication requirements;

(3) monitoring a program participant's vital signs;

(4) providing a program participant with counseling and social support; and

(5) any other service the commission determines is appropriate.

(f) In designing and implementing the program, the commission shall ensure that:

(1) a program participant receives, for the duration of services, at no cost to the participant, home telemonitoring system equipment other than a telephone line and telephone that is necessary for receipt of home health care services through the system;

(2) a program participant or the participant's regular caregiver receives personal training and written instructions in the use and maintenance of the home telemonitoring system equipment;

(3) a program participant's satisfaction with home health care services provided through a home telemonitoring system is frequently monitored and evaluated by the commission; and

(4) the quality of home health care services provided through a home telemonitoring system to a program participant is frequently monitored and evaluated by the commission.

(g) The commission shall adopt all rules necessary for implementation of the program.

(h) Not later than December 1, 2004, the commission shall submit a report to the legislature regarding the program that includes:

(1) an analysis of:

(A) the program's cost-effectiveness;

(B) the program's effect on the quality of health care received by program participants; and

(C) the satisfaction of program participants with home health care services provided through home telemonitoring systems; and

(2) recommendations regarding elimination, continuation, or expansion of the program.

(i) This section expires September 1, 2005.

SECTION 18. Chapter 533, Health and Safety Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. JAIL DIVERSION PROGRAM

Sec. 533.101. JAIL DIVERSION PILOT PROGRAM. (a) The board and department shall develop and implement a pilot program in one rural area and one urban area designed to incorporate audiovisual telecommunications systems to:

(1) divert persons with mental illness from the criminal justice system, when appropriate treatment services are available;

(2) provide access to appropriate mental health services to persons who have entered the criminal justice system; and

(3) increase the awareness of law enforcement officers and officials to mental health issues that may bring persons with mental illness into the criminal justice system.

(b) In designing the program, the commission shall employ to the greatest extent practicable available electronic information systems for the program, including:

(1) systems to enable the transmission of booking information;

(2) computer and software systems to match client data to booking information;

(3) electronic messaging and notification systems; and

(4) audiovisual teleconferencing or other teleconferencing or telecommunications systems.

(c) The department and participating local mental health authorities, prosecutorial agencies, law enforcement agencies, jail facilities, courts, county or municipal governments, and providers of psychiatric services shall enter into an agreement regarding the procedures to follow in implementing the program and the duties of each participating entity. The participating county shall be responsible for establishing the diversion team as prescribed by the department.

Sec. 533.102. PREBOOKING DIVERSION. (a) The pilot program shall incorporate a system for diverting a person with mental illness from the criminal justice system before the person's contact with a law enforcement officer results in:

(1) charges being brought against the person; or

(2) the person being detained in a jail.

(b) The prebooking diversion system shall provide for a law enforcement officer or booking center staff member to request a mental health or crisis stabilization evaluation of a person by a local mental health authority crisis counselor or the equivalent through an audiovisual teleconference. The board by rule shall establish procedures for evaluations performed under the system.

Sec. 533.103. POSTBOOKING DIVERSION BY COURT. The pilot program shall incorporate a system for diverting a person with mental illness from the criminal justice system by a court at the person's arraignment or a court hearing. A court participating in the pilot program may order:

(1) the assessment of a person before the court by the local mental health authority to assess appropriate community mental health treatment options as alternatives to prosecution; and

(2) a person before the court to undertake appropriate psychiatric treatment as a condition of the dismissal of criminal charges, deferral of prosecution, bail, or probation.

Sec. 533.104. POSTBOOKING DIVERSION FOR PERSON IN JAIL. (a) The pilot program shall incorporate a system to provide routine mental health treatment to a person in jail by the local mental health authority through an audiovisual teleconferencing system.

(b) The program must include a jail diversion liaison employed by the local mental health authority who shall:

(1) determine whether certain jailed individuals are eligible for diversion treatment programs; and

(2) facilitate the interaction of jail staff and court officials to further the program.

(c) The local mental health authority must employ a jail diversion team to select candidates for diversion into mental health treatment based on:

(1) the nature of the offense for which the person is jailed;

(2) the person's history of incarceration;

(3) the person's mental status;

(4) the availability of community mental health resources appropriate for the person;

(5) public safety factors;

(6) the person's previous performance in and compliance with treatment settings; and

(7) other appropriate factors.

Sec. 533.105. INFORMATION SYSTEM TO SUPPORT POSTBOOKING DIVERSION. (a) To support the postbooking jail diversion program, the pilot program must provide for implementation of an information system designed to quickly identify a person with a serious mental illness who has entered the local jail system.

(b) The pilot program must provide for electronic transmission of information concerning all admissions to jails participating in the program to an information system at the local mental health authority.

(c) The local mental health authority shall ensure that the authority's information system automatically:

(1) identifies whether persons admitted to jail are current or former clients of the authority using the person's name, date of birth, social security number, sex, or other identifying information; and

(2) notifies a jail diversion team and case manager at the authority when a client or former client of the authority is identified as having been admitted to jail.

Sec. 533.106. REPORTS TO LEGISLATURE. The board shall evaluate the pilot program under this subchapter and publish a report on the performance of the program in providing needed treatment and in saving or increasing costs to the jail and mental health systems. The board shall deliver the report to the governor, lieutenant governor, and speaker of the house of representatives not later than November 1 of each even-numbered year.

Sec. 533.107. EXPIRATION. This subchapter expires September 1, 2005.

SECTION 19. (a) For purposes of this section, a licensed dentist may delegate orally, in writing, or through advanced audio and video telecommunications services a service, task, or procedure to a dental hygienist who is under the supervision and responsibility of the dentist, if:

(1) the dental hygienist is licensed to perform the service, task, or procedure;
(2) the supervising dentist examines the patient either in person or through advanced audio and video telecommunications services:

(A) at the time the service, task, or procedure is performed by the dental hygienist; or

(B) during the 12 calendar months preceding the date of performance of the service, task, or procedure by the dental hygienist; and

(3) the dental hygienist does not:

(A) diagnose a dental disease or ailment;

(B) prescribe a treatment or a regimen;

(C) prescribe, order, or dispense medication; or

(D) perform any procedure that is irreversible or involves the intentional cutting of soft or hard tissue by any means.

(b) In this section:

(1) "Dental professional" means:

(A) a dentist licensed under Subtitle D, Title 3, Occupations Code; or

(B) a dental hygienist licensed under Chapter 262, Occupations Code, practicing under the supervision of a dentist.

(2) "Student" means a person who is under 19 years of age, is enrolled in a public school, and receives dental services under Chapter 32, Human Resources Code.

(3) "Teledentistry dental services" means a dental service that utilizes, in whole or in part, advanced telecommunications technology including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission via computer imaging for teleradiology or telepathology; and

(C) other technology that facilitates access in rural and underserved counties to dental services or dental specialty expertise.

(c) The commissioner of human services shall appoint a program administrator to administer a pilot program that uses teledentistry and other methods of delivering dental services to provide dental services to students in one public school district in the state.

(d) The program administrator shall establish an advisory committee to assist the program administrator in developing and implementing the pilot program.

(e) In developing the pilot program, the program administrator shall design the program in a manner that:

(1) increases access to dental services and enhances the delivery of dental services to students;

(2) ensures the provision of oral health education services;

(3) provides for effective and appropriate supervision by a dentist of other dental professionals providing care under the program; and

(4) enables the state to determine whether extension of the use of teledentistry would improve the delivery of dental services.

- (f) The program administrator shall adopt procedures as necessary to:
- (1) ensure that appropriate care, including quality of care, is provided to students who receive teledentistry dental services;
 - (2) ensure adequate supervision of dental professionals who are not dentists and who provide teledentistry dental services;
 - (3) establish the maximum number of dental professionals who are not dentists that a dentist may supervise; and
 - (4) require a face-to-face consultation with a dentist within a certain number of days following a teledentistry dental service.
- (g) Only a teledentistry dental service initiated or provided by a licensed dentist in this state may be reimbursed under the Medicaid program. Medicaid reimbursement for a teledentistry dental service shall be at the same rate as the Medicaid program reimburses for a comparable in-person dental service. A request for reimbursement may not be denied solely because an in-person consultation between a dentist or other dental professional and a patient did not occur. Reimbursement for a dental hygienist for service shall be made through the supervising dentist.
- (h) A dental hygienist must act under the remote supervision of a local dentist. Both the dentist and the hygienist must be located within the boundaries of the school district served by the pilot program.
- (i) Images and assessment information shall be sent by the dental hygienist to a supervising dentist either live or by means of store and forward technology. After a dentist has reviewed the required information, the dentist may authorize the provision of preventive services by the dental hygienist located at the school.
- (j) A dental hygienist participating in the pilot program may initiate screening and assessment services and, under the supervision of a dentist, may perform any procedure the hygienist is authorized to perform under law.
- (k) A teledentistry dental service may not be provided if an in-person consultation with a dentist is reasonably available to a student. Dentists and other dental professionals participating in the pilot program shall make a good faith effort to identify and coordinate with existing providers to preserve and protect existing dental care systems and dental relationships.
- (l) The program administrator shall establish a control group not to exceed 1,000 students to provide a benchmark for measuring the performance of the pilot program. Each student in the control group shall be examined by a dentist, in person, at the end of the program to evaluate the effectiveness of teledentistry dental services provided during the program. The examining dentist must practice in a dental office located outside the boundaries of the school district served by the pilot program.
- (m) The program administrator shall use the results of the pilot program to:
- (1) determine the efficacy of teledentistry; and
 - (2) determine the effectiveness of teledentistry in increasing access to dental services and improving oral health of students.
- (n) A dental professional who provides teledentistry dental services shall ensure that the informed consent of the student or a person authorized to provide consent for the student is obtained before teledentistry dental services are provided.
- (o) Students participating in the pilot program must be referred to local dentists for restorative care and monitored to ensure that restorative services are provided.

(p) Not later than December 31, 2002, the program administrator shall submit a report to the legislature containing the following:

- (1) the number of students who received teledentistry dental services;
- (2) the types of teledentistry dental services provided;
- (3) the cost and level of utilization of teledentistry dental services;
- (4) the effect of the pilot program on school absenteeism of students in the control group;
- (5) a description of improvements in the oral health of students in the pilot program; and
- (6) recommendations for changes in or the expansion of the pilot program.

(q) This section expires and the advisory committee is abolished December 31, 2002.

SECTION 20. Not later than October 1, 2001, the Health and Human Services Commission and the Telecommunications Infrastructure Fund Board shall adopt minimum standards for an operating system used by a health care facility in providing telemedicine medical services to a Medicaid recipient as required by Section 531.02161, Government Code, as added by this Act.

SECTION 21. Not later than January 1, 2002, the Health and Human Services Commission shall adopt rules required by Section 531.0217, Government Code, as amended by this Act.

SECTION 22. (a) The commissioner of human services shall appoint a program administrator for the teledentistry pilot program, as added by Section 19 of this Act, not later than the 30th day after the effective date of this Act.

(b) The program administrator shall appoint an advisory committee and shall begin implementing the teledentistry pilot program not later than the 30th day after the date the program administrator is appointed.

SECTION 23. Section 57.046(b)(8), Utilities Code, as added by this Act, expires September 1, 2003.

SECTION 24. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 25. 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

Amend **CSSB 789** as follows:

(1) In Section 1 of the bill, in amended Section 531.0216(b), Government Code, strike added Subdivision (4) (House committee printing, page 1, lines 19-22), and substitute the following:

(4) consult with the Texas Department of Health and the telemedicine advisory committee to establish procedures to:

(A) identify clinical evidence supporting delivery of health care services using a telecommunications system by January 1, 2001;

(B) establish pilot studies for telemedicine medical service delivery; and
(C) annually review health care services, considering new clinical findings, to determine whether reimbursement for particular services should be denied or authorized;

(2) In Section 17 of the bill, in added Section 32.053(f), Human Resources Code (House committee printing, page 22, line 6), strike "and".

(3) In Section 17 of the bill, in added Section 32.053(f), Human Resources Code (House committee printing, page 22, line 9), between "commission" and the period, insert the following:
"; and

(5) the home and community support services agency that is providing services using home telemonitoring system equipment pays for the equipment".

(4) In Section 18 of the bill, in added Section 533.101, Health and Safety Code (House committee printing, page 24, between lines 4 and 5), add a new Subsection (d) to read as follows:

(d) If appropriate treatment services are not available, a person with mental illness does not have to be diverted from the criminal justice system.

The amendments were read.

Senator Moncrief moved to concur in the House amendments to **SB 789**.

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

Present-not voting: Mr. President.

BIRTHDAY GREETINGS EXTENDED

Senator Ellis was recognized and announced to the Senate that today is Senate Parliamentarian Walter Fisher's birthday.

The Senate extended birthday greetings to the Parliamentarian.

SENATE BILL 198 WITH HOUSE AMENDMENT

Senator Moncrief called **SB 198** 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 198** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to executory contracts for the conveyance of real property.

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

SECTION 1. Subchapters D and E, Chapter 5, Property Code, are amended to consolidate the subchapters by amending and redesignating Section 5.065 as Section 5.061, amending and redesignating Section 5.091 as Section 5.062, amending and redesignating Section 5.062 as Section 5.063, amending and redesignating Section 5.061 as Section 5.064, amending and redesignating Section 5.063 as Section 5.065, amending and redesignating Section 5.101 as Section 5.066,

redesignating Section 5.064 as Section 5.067, amending and redesignating Section 5.093 as Section 5.068, amending and redesignating Section 5.094 as Section 5.069, adding Section 5.070, amending and redesignating Section 5.095 as Section 5.071, adding Section 5.072, amending and redesignating Section 5.096 as Section 5.073, redesignating Section 5.097 as Section 5.074, amending and redesignating Section 5.098 as Section 5.075, amending and redesignating Section 5.099 as Section 5.076, amending and redesignating Section 5.100 as Section 5.077, adding Section 5.078, amending and redesignating Section 5.102 as Section 5.079, and redesignating Section 5.103 as Section 5.080 to read as follows:

Sec. 5.061 ~~[5.065]~~. DEFINITION ~~[DEFAULT]~~. In this subchapter, "default" means the failure to:

- (1) make a timely payment; or
- (2) comply with a term of an executory contract.

Sec. 5.062 ~~[5.094]~~. APPLICABILITY. (a) ~~[This subchapter applies only to an executory contract that covers real property located in a county that, as determined by the Texas Department of Housing and Community Affairs:~~

~~[(1) has a per capita income that averaged 25 percent below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25 percent above the state average for the most recent three consecutive years for which statistics are available; and~~

~~[(2) is within 200 miles of an international border.~~

~~[(b)] This subchapter applies only to a transaction involving an executory contract for conveyance of real property used or to be used as the purchaser's residence or as the residence of a person related to the purchaser within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code. For purposes of this subchapter, a lot measuring one acre or less is presumed to be residential property.~~

~~[(b)] [(e)] This subchapter does not apply to a transaction involving the sale of state land or a sale of land by the Veterans' Land Board under an executory contract.~~

~~[(c)] [(d)] This subchapter does not apply to an executory contract that provides for the delivery of a deed from the seller to the purchaser within 180 days of the date of the final execution of the executory contract.~~

~~[(d)] Section 5.066 and Sections 5.068-5.080 do not apply to a transaction involving an executory contract for conveyance if the purchaser of the property:~~

~~[(1) is related to the seller of the property within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code; and~~

~~[(2) has waived the applicability of those sections in a written agreement.~~

Sec. 5.063 ~~[5.062]~~. NOTICE. (a) Notice under Section 5.064 ~~[5.061 of this code]~~ must be in writing and [- If the notice is mailed, it] must be delivered by registered or certified mail, return receipt requested. The notice must be conspicuous and printed in 14-point boldface type or 14-point uppercase typewritten letters, and must include on a separate page the statement:

NOTICE

YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE BY (date) THE SELLER HAS THE RIGHT TO TAKE POSSESSION OF YOUR PROPERTY.

(b) The notice must also:

- (1) identify and explain the remedy the seller intends to enforce;
- (2) if the purchaser has failed to make a timely payment, specify:
 - (A) the delinquent amount, itemized into principal and interest;
 - (B) any additional charges claimed, such as late charges or attorney's

fees; and

(C) the period to which the delinquency and additional charges relate; and

(3) if the purchaser has failed to comply with a term of the contract, identify the term violated and the action required to cure the violation.

(c) Notice by mail is given when it is mailed to the purchaser's residence or place of business. ~~[Notice by other writing is given when it is delivered to the purchaser at the purchaser's residence or place of business.]~~ The affidavit of a person knowledgeable of the facts to the effect that notice was given is prima facie evidence of notice in an action involving a subsequent bona fide purchaser for value if the purchaser is not in possession of the real property and if the stated time to avoid the forfeiture has expired. A bona fide subsequent purchaser for value who relies upon the affidavit under this subsection shall take title free and clear of the contract.

Sec. 5.064 ~~[5:064]~~. SELLER'S REMEDIES ON DEFAULT [AVOIDANCE OF FORFEITURE AND ACCELERATION OR OF RESCISSION]. A seller may enforce the remedy of rescission or of forfeiture and acceleration against a purchaser in default under an executory contract for conveyance of real property ~~[used or to be used as the purchaser's residence]~~ only if:

(1) the seller notifies the purchaser of:

~~(A) [(+)] the seller's intent to enforce a remedy under this section; and~~

~~(B) [(2)] the purchaser's right to cure the default within the 60-day period described by Section 5.065;~~

~~(2) the purchaser fails to cure the default within the 60-day period described by Section 5.065; and~~

~~(3) Section 5.066 does not apply [expiration of the following periods:~~

~~[(A) if the purchaser has paid less than 10 percent of the purchase price, 15 days after the date notice is given;~~

~~[(B) if the purchaser has paid 10 percent or more but less than 20 percent of the purchase price, 30 days after the date notice is given; and~~

~~[(C) if the purchaser has paid 20 percent or more of the purchase price, 60 days after the date notice is given].~~

Sec. 5.065 ~~[5:063]~~. RIGHT TO CURE DEFAULT. Notwithstanding an agreement to the contrary, a purchaser in default under an executory contract for the conveyance of real property ~~[used or to be used as the purchaser's residence]~~ may~~[-~~at any time before expiration of the applicable period provided by Section 5.061 of this code,] avoid the enforcement of a remedy described by Section 5.064 ~~[that section]~~ by complying with the terms of the contract ~~on or before the 60th day after the date notice is given under that section [up to the date of compliance]~~.

Sec. 5.066 ~~[5:101]~~. EQUITY PROTECTION; SALE OF PROPERTY. (a) If a purchaser defaults after the purchaser has paid 40 percent or more of the amount due

or the equivalent of 48 monthly payments under the executory contract, the seller is granted the power to sell, through a trustee designated by the seller, the purchaser's interest in the property as provided by this section. The seller may not enforce the remedy of rescission or of forfeiture and acceleration.

(b) The seller shall notify a purchaser of a default under the contract and allow the purchaser at least 60 days after the date notice is given to cure the default. The notice must be provided as prescribed by Section 5.063 [~~5.062~~] except that the notice must substitute the following statement:

NOTICE

YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE BY (date) A TRUSTEE DESIGNATED BY THE SELLER HAS THE RIGHT TO SELL YOUR PROPERTY AT A PUBLIC AUCTION.

(c) The trustee or a substitute trustee designated by the seller must post, file, and serve a notice of sale and the county clerk shall record and maintain the notice of sale as prescribed by Section 51.002. A notice of sale is not valid unless it is given after the period to cure has expired.

(d) The trustee or a substitute trustee designated by the seller must conduct the sale as prescribed by Section 51.002. The seller must:

(1) convey to a purchaser at a sale conducted under this section fee simple title to the real property; and

(2) warrant that the property is free from any encumbrance.

(e) The remaining balance of the amount due under the executory contract is the debt for purposes of a sale under this section. If the proceeds of the sale exceed the debt amount, the seller shall disburse the excess funds to the purchaser under the executory contract. If the proceeds of the sale are insufficient to extinguish the debt amount, the seller's right to recover the resulting deficiency is subject to Sections 51.003, 51.004, and 51.005 unless a provision of the executory contract releases the purchaser under the contract from liability.

(f) The affidavit of a person knowledgeable of the facts that states that the notice was given and the sale was conducted as provided by this section is prima facie evidence of those facts [~~in an action involving a bona fide purchaser at the sale or a subsequent bona fide purchaser for value if the purchaser under the executory contract is not in possession of the property and if the period to cure the default has expired~~]. A [~~bona fide~~] purchaser for value who relies on an affidavit under this subsection acquires title to the property free and clear of the executory contract.

(g) If a purchaser defaults before the purchaser has paid 40 percent of the amount due or the equivalent of 48 monthly payments under the executory contract, the seller may enforce the remedy of rescission or of forfeiture and acceleration of the indebtedness if the seller complies with the notice requirements of Sections 5.063 and 5.064 [~~5.061 and 5.062~~].

Sec. 5.067 [~~5.064~~]. PLACEMENT OF LIEN FOR UTILITY SERVICE. Notwithstanding any terms of a contract to the contrary, the placement of a lien for the reasonable value of improvements to residential real estate for purposes of providing utility service to the property shall not constitute a default under the terms of an executory contract for the purchase of the real property.

Sec. 5.068 [5.093]. FOREIGN [SPANISH] LANGUAGE REQUIREMENT. If the negotiations that precede the execution of an executory contract are conducted primarily in a language other than English [Spanish], the seller shall provide a copy in that language [Spanish] of all written documents relating to the transaction, including the contract, disclosure notices [notice], [and] annual accounting statements, [required by this subchapter] and a notice of default required by this subchapter [Subchapter D].

Sec. 5.069 [5.094]. SELLER'S DISCLOSURE OF PROPERTY CONDITION.
(a) Before an executory contract is signed by the purchaser, the seller shall provide the purchaser with:

(1) a survey, which was completed within the past year, or plat of a current survey of the real property;

(2) a legible copy of any document that describes an encumbrance or other claim, including a restrictive covenant or easement, that affects title to the real property; and

(3) a written notice, which must be attached to the contract, informing the purchaser of the condition of the property that must, at a minimum, be executed by the seller and purchaser and read substantially similar to the following:

WARNING

IF ANY OF THE ITEMS BELOW HAVE NOT BEEN CHECKED, YOU MAY NOT BE ABLE TO LIVE ON THE PROPERTY.

SELLER'S DISCLOSURE NOTICE

CONCERNING THE PROPERTY AT (street address or legal description and city)
THIS DOCUMENT STATES CERTAIN APPLICABLE FACTS ABOUT THE
PROPERTY [LAND] YOU ARE CONSIDERING PURCHASING.
CHECK ALL THE ITEMS THAT ARE APPLICABLE OR TRUE:

- The property is in a recorded subdivision.
- The property has water service that provides potable water.
- The property has sewer service.
- The property has been approved by the appropriate municipal, county, or state agency for installation of a septic system.
- The property has electric service.
- The property is not in a floodplain.
- The roads to the boundaries of the property are paved and maintained by:
- the seller;
- the owner of the property on which the road exists;
- the municipality;
- the county; or
- the state.
- No individual or entity other than the seller:
- (1) owns the property;
- (2) has a claim of ownership to the property; or
- (3) has an interest in the property.
- No individual or entity has a lien filed against the property.
- ~~There are no back taxes owed on the property.~~
- There are no restrictive covenants, easements, or other title exceptions or encumbrances that prohibit construction of a house on the property.

NOTICE: SELLER ADVISES PURCHASER TO:

(1) OBTAIN A TITLE ABSTRACT OR TITLE COMMITMENT COVERING THE PROPERTY AND HAVE THE ABSTRACT OR COMMITMENT REVIEWED BY AN ATTORNEY BEFORE SIGNING A CONTRACT OF THIS TYPE; AND

(2) PURCHASE AN OWNER'S POLICY OF TITLE INSURANCE COVERING THE PROPERTY.

(Date)

(Signature of Seller)

(Date)

(Signature of Purchaser)

(b) If the property is not located in a recorded subdivision, the seller shall provide the purchaser with a separate disclosure form stating that utilities may not be available to the property until the subdivision is recorded as required by law.

(c) If the seller advertises property for sale under an executory contract, the advertisement must disclose information regarding the availability of water, sewer, and electric service.

(d) The seller's failure to provide information required by this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) entitles the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller.

(e) Subsection (d) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Sec. 5.070. SELLER'S DISCLOSURE OF TAX PAYMENTS AND INSURANCE COVERAGE. (a) Before an executory contract is signed by the purchaser, the seller shall provide the purchaser with:

(1) a tax certificate from the collector for each taxing unit that collects taxes due on the property as provided by Section 31.08, Tax Code; and

(2) a legible copy of any insurance policy, binder, or other evidence relating to the property that indicates:

(A) the name of the insurer and the insured;

(B) a description of the property insured; and

(C) the amount for which the property is insured.

(b) The seller's failure to provide information required by this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) entitles the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller.

(c) Subsection (b) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Sec. 5.071 [5-095]. SELLER'S DISCLOSURE OF FINANCING TERMS. Before an executory contract is signed by the purchaser, the seller shall provide to the purchaser a written statement that specifies:

(1) the purchase price of the property;
 (2) the interest rate charged under the contract;
 (3) the dollar amount, or an estimate of the dollar amount if the interest rate is variable, of the interest charged for the term of the contract;
 (4) the total amount of principal and interest to be paid under the contract;
 (5) the late charge, if any, that may be assessed under the contract; and
 (6) the fact that the seller may not charge a prepayment penalty or any similar fee if the purchaser elects to pay the entire amount due under the contract before the scheduled payment date under the contract.

Sec. 5.072. ORAL AGREEMENTS PROHIBITED. (a) An executory contract is not enforceable unless the contract is in writing and signed by the party to be bound or by that party's authorized representative.

(b) The rights and obligations of the parties to a contract are determined solely from the written contract, and any prior oral agreements between the parties are superseded by and merged into the contract.

(c) An executory contract may not be varied by any oral agreements or discussions that occur before or contemporaneously with the execution of the contract.

(d) The seller shall include in a separate document or in a provision of the contract a statement printed in 14-point boldfaced type or 14-point uppercase typewritten letters that reads substantially similar to the following:

THIS EXECUTORY CONTRACT REPRESENTS THE FINAL AGREEMENT BETWEEN THE SELLER AND PURCHASER AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

 (Date)

 (Signature of Seller)

 (Date)

 (Signature of Purchaser)

(e) The seller's failure to provide the notice required by this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) entitles the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller.

(f) Subsection (e) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Sec. 5.073 [5.096]. CONTRACT TERMS PROHIBITED. A seller may not include as a term of the executory contract a provision that:

(1) imposes an additional late-payment fee that exceeds the lesser of:

- (A) eight percent of the monthly payment under the contract; or
- (B) the actual administrative cost of processing the late payment;

(2) prohibits the purchaser from pledging the purchaser's interest in the property as security to obtain a loan to place improvements, including utility improvements or fire protection improvements, on the property; or

(3) imposes a prepayment penalty or any similar fee if the purchaser elects to pay the entire amount due under the contract before the scheduled payment date under the contract.

Sec. 5.074 [5.097]. PURCHASER'S RIGHT TO CANCEL CONTRACT WITHOUT CAUSE. (a) In addition to other rights or remedies provided by law, the purchaser may cancel and rescind an executory contract for any reason by sending by telegram or certified or registered mail, return receipt requested, or by delivering in person a signed, written notice of cancellation to the seller not later than the 14th day after the date of the contract.

(b) If the purchaser cancels the contract as provided by Subsection (a), the seller shall, not later than the 10th day after the date the seller receives the purchaser's notice of cancellation:

(1) return to the purchaser the executed contract and any property exchanged or payments made by the purchaser under the contract; and

(2) cancel any security interest arising out of the contract.

(c) The seller shall include in immediate proximity to the space reserved in the executory contract for the purchaser's signature a statement printed in 14-point boldface type or 14-point uppercase typewritten letters that reads substantially similar to the following:

YOU, THE PURCHASER, MAY CANCEL THIS CONTRACT AT ANY TIME DURING THE NEXT TWO WEEKS. THE DEADLINE FOR CANCELING THE CONTRACT IS (date). THE ATTACHED NOTICE OF CANCELLATION EXPLAINS THIS RIGHT.

(d) The seller shall provide a notice of cancellation form to the purchaser at the time the purchaser signs the executory contract that is printed in 14-point boldface type or 14-point uppercase typewritten letters and that reads substantially similar to the following:

NOTICE OF CANCELLATION

(date of contract)

YOU MAY CANCEL THE EXECUTORY CONTRACT FOR ANY REASON WITHOUT ANY PENALTY OR OBLIGATION BY (date).

(1) YOU MUST SEND BY TELEGRAM OR CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, OR DELIVER IN PERSON A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE TO (Name of Seller) AT (Seller's Address) BY (date).

(2) THE SELLER SHALL, NOT LATER THAN THE 10TH DAY AFTER THE DATE THE SELLER RECEIVES YOUR CANCELLATION NOTICE:

(A) RETURN THE EXECUTED CONTRACT AND ANY PROPERTY EXCHANGED OR PAYMENTS MADE BY YOU UNDER THE CONTRACT; AND

(B) CANCEL ANY SECURITY INTEREST ARISING OUT OF THE CONTRACT.

I ACKNOWLEDGE RECEIPT OF THIS NOTICE OF CANCELLATION FORM.

(Date)

(Purchaser's Signature)

I HEREBY CANCEL THIS CONTRACT.

(Date)

(Purchaser's Signature)

(e) The seller may not request the purchaser to sign a waiver of receipt of the notice of cancellation form required by this section.

Sec. 5.075 [~~5.098~~]. PURCHASER'S RIGHT TO PLEDGE INTEREST IN PROPERTY ON CONTRACTS ENTERED INTO BEFORE SEPTEMBER 1, 2001 [~~1995~~]. (a) On an executory contract entered into before September 1, 2001 [~~1995~~], a purchaser may pledge the interest in the property, which accrues pursuant to Section 5.066 [~~5.101~~], only to obtain a loan for improving the safety of the property or any improvements on the property.

(b) Loans that improve the safety of the property and improvements on the property include loans for:

- (1) improving or connecting a residence to water service;
- (2) improving or connecting a residence to a wastewater system;
- (3) building or improving a septic system;
- (4) structural improvements in the residence; and
- (5) improved fire protection.

Sec. 5.076 [~~5.099~~]. RECORDING REQUIREMENTS. (a) Except as provided by Subsection (b), the seller shall record the executory contract, including the attached disclosure statement required by Section 5.069 [~~5.094~~], as prescribed by Title 3 on or before the 30th day after the date the contract is executed.

(b) Section 12.002(c) does not apply to an executory contract filed for record under this section.

(c) If the executory contract is terminated for any reason, the seller shall record the instrument that terminates the contract.

(d) The county clerk shall collect the filing fee prescribed by Section 118.011, Local Government Code.

Sec. 5.077 [~~5.100~~]. ANNUAL ACCOUNTING STATEMENT. (a) The seller shall provide the purchaser with an annual statement in January of each year for the term of the executory contract. If the seller mails the statement to the purchaser, the statement must be postmarked not later than January 31.

(b) The statement must include the following information:

- (1) the amount paid under the contract;
- (2) the remaining amount owed under the contract;
- (3) the number of payments remaining under the contract; [~~and~~]
- (4) the amounts paid to taxing authorities on the purchaser's behalf if collected by the seller;
- (5) the amounts paid to insure the property on the purchaser's behalf if collected by the seller;
- (6) if the property has been damaged and the seller has received insurance proceeds, an accounting of the proceeds applied to the property; and
- (7) if the seller has changed insurance coverage, a legible copy of the current policy, binder, or other evidence that satisfies the requirements of Section 5.070(a)(2).

(c) A [~~If the~~] seller who fails to comply with Subsection (a) is liable to [~~;~~] the purchaser for [~~may~~]:

(1) liquidated damages in the amount of \$250 a day for each day after January 31 that [~~notify~~] the seller fails to provide [~~that~~] the purchaser with [~~has not received~~] the statement [~~and will deduct 15 percent of each monthly payment due until the statement is received~~]; and

(2) reasonable attorney's fees [~~not earlier than the 25th day after the date the purchaser provides the seller notice under this subsection, deduct 15 percent of each monthly payment due until the statement is received by the purchaser.~~

~~[(d) A purchaser who makes a deduction under Subsection (c) is not required to reimburse the seller for the amount deducted].~~

Sec. 5.078. DISPOSITION OF INSURANCE PROCEEDS. (a) The named insured under an insurance policy, binder, or other coverage relating to property subject to an executory contract for the conveyance of real property shall inform the insurer, not later than the 10th day after the date the coverage is obtained or the contract executed, whichever is later, of:

- (1) the executory contract for conveyance and the term of the contract; and
- (2) the name and address of the other party to the contract.

(b) An insurer who disburses proceeds under an insurance policy, binder, or other coverage relating to property that has been damaged shall issue the proceeds jointly to the purchaser and the seller designated in the contract.

(c) If proceeds under an insurance policy, binder, or other coverage are disbursed, the purchaser and seller shall ensure that the proceeds are used to repair, remedy, or improve the condition on the property.

(d) The failure of a seller or purchaser to comply with Subsection (c) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

(e) Subsection (d) does not limit either party's remedy for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Sec. 5.079 [5.102]. TITLE TRANSFER. (a) The seller shall transfer recorded, legal title of the property covered by the executory contract to the purchaser not later than the 30th day after the date the seller receives the purchaser's final payment due under the contract.

(b) A seller who violates Subsection (a) is liable to the purchaser for [subject to a penalty of]:

- (1) liquidated damages in the amount of:

(A) \$250 a day for each day the seller fails to transfer the title to the purchaser during the period that begins the 31st day and ends the 90th day after the date the seller receives the purchaser's final payment due under the contract; and

(B) [~~2~~] \$500 a day for each day the seller fails to transfer title to the purchaser after the 90th day after the date the seller receives the purchaser's final payment due under the contract; and

- (2) reasonable attorney's fees.

(c) If a person to whom a seller's property interest passes by will or intestate succession is required to obtain a court order to clarify the person's status as an heir or to clarify the status of the seller or the property before the person may convey good and indefeasible title to the property, the court in which the action is pending may waive payment of the liquidated damages and attorney's fees under Subsection (b) if the court finds that the person is pursuing the action to establish good and indefeasible title with reasonable diligence.

(d) [~~e~~] In this section, "seller" includes a successor, assignee, personal representative, executor, or administrator of the seller.

Sec. 5.080 [5.103]. LIABILITY FOR DISCLOSURES. For purposes of this subchapter, a disclosure required by this subchapter that is made by a seller's agent is a disclosure made by the seller.

SECTION 2. The following are repealed:

- (1) the heading to Subchapter E, Chapter 5, Property Code; and
- (2) Section 5.092, Property Code.

SECTION 3. (a) This Act takes effect September 1, 2001.

(b) The changes in law made by Sections 5.063, 5.064, 5.065, and 5.066, Property Code, as amended and redesignated by this Act, apply only to a purchaser who defaults under Subchapter D, Chapter 5, Property Code, as amended by this Act, on or after September 1, 2001, regardless of when the contract was entered into. A purchaser who is in default before September 1, 2001, is covered by the law in effect when the default occurred, and the former law is continued in effect for that purpose.

(c) The changes in law made by Sections 5.068 and 5.069, Property Code, as amended and redesignated by this Act, and Section 5.070, Property Code, as added by this Act, apply only to transactions involving executory contracts for conveyance for which negotiations begin on or after September 1, 2001. For purposes of this subsection, negotiations begin on the date an offer to enter into an executory contract for conveyance is made. Transactions involving executory contracts for conveyance for which negotiations begin before September 1, 2001, are covered by the law in effect when the negotiations began, and the former law is continued in effect for that purpose.

(d) The change in law made by the amendment of Section 5.091 and the repeal of Section 5.092, Property Code, by this Act and the application of Section 5.071, Property Code, as amended and redesignated by this Act, and 5.080, Property Code, as redesignated by this Act, applies only to transactions involving executory contracts for conveyance for which negotiations begin on or after September 1, 2001. For purposes of this subsection, negotiations begin on the date an offer to enter into an executory contract for conveyance is made.

(e) The change in law made by the amendment of Section 5.091 and the repeal of Section 5.092, Property Code, by this Act and the application of Section 5.072, Property Code, as added by this Act, Section 5.074, Property Code, as redesignated by this Act, and Sections 5.073 and 5.076, Property Code, as amended and redesignated by this Act, applies only to a contract entered into on or after September 1, 2001.

(f) The change in law made by the amendment of Section 5.091 and the repeal of Section 5.092, Property Code, by this Act and the application of Section 5.075, Property Code, as amended and redesignated by this Act, applies to a purchaser on or after September 1, 2001, who accrues interest as provided by that section regardless of when the interest accrued.

(g) The changes in law made by the amendment of Section 5.091 and the repeal of Section 5.092, Property Code, by this Act and the application of Sections 5.077(a) and (b), Property Code, as amended and redesignated by this Act, and Section 5.079(a), Property Code, as redesignated by this Act, apply to an executory contract on or after September 1, 2001, regardless of when the contract was entered into.

(h) The change in law made by Sections 5.077(c) and 5.079(b), Property Code, as amended and redesignated by this Act, applies only to a violation that occurs on or after September 1, 2001. A violation that occurs before September 1, 2001, is covered by the law in effect when the violation occurred, and the former law is continued in effect for that purpose.

(i) The change in law made by Section 5.078, Property Code, as added by this Act, applies to an executory contract regardless of when the contract was entered into. A named insured who currently holds an insurance policy binder or other coverage relating to property subject to an executory contract shall notify the insurer as provided by Section 5.078(a), Property Code, not later than January 1, 2002.

The amendment was read.

On motion of Senator Moncrief, the Senate concurred in the House amendment to **SB 198** by a viva voce vote.

SENATE BILL 261 WITH HOUSE AMENDMENT

Senator Bernsen called **SB 261** 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 261** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the warnings pet stores must provide concerning reptile-associated salmonellosis; providing an administrative penalty.

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

SECTION 1. Chapter 81, Health and Safety Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. ANIMAL-BORNE DISEASES

Sec. 81.351. DEFINITION. In this subchapter, "pet store" means a retail store that sells animals as pets.

Sec. 81.352. WARNING SIGN REQUIRED; RULES. (a) The owner or operator of a pet store that sells reptiles shall:

(1) post a sign warning of reptile-associated salmonellosis in accordance with department rules; and

(2) ensure that a written warning related to reptile-associated salmonellosis is provided to each purchaser of a reptile.

(b) The department shall adopt rules to govern:

(1) the form and content of the sign required by Subsection (a) and the manner and place of posting of the sign; and

(2) the form and content of the written warning required by Subsection (a).

Sec. 81.353. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty if a person violates this section or a rule adopted under this section.

(b) In determining the amount of the penalty, the department shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) such other matters as justice may require.

(c) The penalty may not exceed \$500 for each month a violation continues.

(d) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the board to contest the affidavit as provided by those rules.

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

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

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

The amendment was read.

On motion of Senator Bernsen, the Senate concurred in the House amendment to **SB 261** by a viva voce vote.

SENATE BILL 507 WITH HOUSE AMENDMENTS

Senator Carona called **SB 507** 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 507** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to residential subdivisions that require membership in a property owners' association.

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

SECTION 1. Title 11, Property Code, is amended by adding Chapter 209 to read as follows:

CHAPTER 209. TEXAS RESIDENTIAL PROPERTY OWNERS PROTECTION ACT

Sec. 209.001. SHORT TITLE. This chapter may be cited as the Texas Residential Property Owners Protection Act.

Sec. 209.002. DEFINITIONS. In this chapter:

(1) "Assessment" means a regular assessment, special assessment, or other amount a property owner is required to pay a property owners' association under the dedicatory instrument or by law.

(2) "Board" means the governing body of a property owners' association.

(3) "Declaration" means an instrument filed in the real property records of a county that includes restrictive covenants governing a residential subdivision.

(4) "Dedicatory instrument" means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision. The term includes restrictions or similar instruments subjecting property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the

property owners' association, and to all lawful amendments to the covenants, bylaws, rules, or regulations.

(5) "Lot" means any designated parcel of land located in a residential subdivision, including any improvements on the designated parcel.

(6) "Owner" means a person who holds record title to property in a residential subdivision and includes the personal representative of a person who holds record title to property in a residential subdivision.

(7) "Property owners' association" or "association" means an incorporated or unincorporated association that:

(A) is designated as the representative of the owners of property in a residential subdivision;

(B) has a membership primarily consisting of the owners of the property covered by the dedicatory instrument for the residential subdivision; and

(C) manages or regulates the residential subdivision for the benefit of the owners of property in the residential subdivision.

(8) "Regular assessment" means an assessment, a charge, a fee, or dues that each owner of property within a residential subdivision is required to pay to the property owners' association on a regular basis and that is designated for use by the property owners' association for the benefit of the residential subdivision as provided by the restrictions.

(9) "Residential subdivision" or "subdivision" means a subdivision, planned unit development, townhouse regime, or similar planned development in which all land has been divided into two or more parts and is subject to restrictions that:

(A) limit a majority of the land subject to the dedicatory instruments, excluding streets, common areas, and public areas, to residential use for single-family homes, townhomes, or duplexes only;

(B) are recorded in the real property records of the county in which the residential subdivision is located; and

(C) require membership in a property owners' association that has authority to impose regular or special assessments on the property in the subdivision.

(10) "Restrictions" means one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the real property records or map or plat records. The term includes any amendment or extension of the restrictions.

(11) "Restrictive covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

(12) "Special assessment" means an assessment, a charge, a fee, or dues, other than a regular assessment, that each owner of property located in a residential subdivision is required to pay to the property owners' association, according to procedures required by the dedicatory instruments, for:

(A) defraying, in whole or in part, the cost, whether incurred before or after the assessment, of any construction or reconstruction, unexpected repair, or replacement of a capital improvement in common areas owned by the property owners' association, including the necessary fixtures and personal property related to the common areas;

(B) maintenance and improvement of common areas owned by the property owners' association; or

(C) other purposes of the property owners' association as stated in its articles of incorporation or the dedicatory instrument for the residential subdivision.

Sec. 209.003. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a residential subdivision that is subject to restrictions or provisions in a declaration that authorize the property owners' association to collect regular or special assessments on all or a majority of the property in the subdivision.

(b) This chapter applies only to a property owners' association that requires mandatory membership in the association for all or a majority of the owners of residential property within the subdivision subject to the association's dedicatory instruments.

(c) This chapter applies to a residential property owners' association regardless of whether the entity is designated as a "homeowners' association," "community association," or similar designation in the restrictions or dedicatory instrument.

(d) This chapter does not apply to a condominium development governed by Chapter 82.

Sec. 209.004. MANAGEMENT CERTIFICATES. (a) A property owners' association shall record in each county in which any portion of the residential subdivision is located a management certificate, signed and acknowledged by an officer or the managing agent of the association, stating:

(1) the name of the subdivision;

(2) the name of the association;

(3) the recording data for the subdivision;

(4) the recording data for the declaration;

(5) the mailing address of the association or the name and mailing address of the person managing the association; and

(6) other information the association considers appropriate.

(b) The property owners' association shall record an amended management certificate not later than the 30th day after the date the association has notice of a change in any information in the recorded certificate required by Subsection (a).

(c) The property owners' association and its officers, directors, employees, and agents are not subject to liability to any person for a delay in recording or failure to record a management certificate, unless the delay or failure is wilful or caused by gross negligence.

Sec. 209.005. ASSOCIATION RECORDS. (a) A property owners' association shall make the books and records of the association, including financial records, reasonably available to an owner in accordance with Section B, Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, Vernon's Texas Civil Statutes).

(b) An attorney's files and records relating to the association, excluding invoices requested by an owner under Section 209.008(d), are not:

(1) records of the association;

(2) subject to inspection by the owner; or

(3) subject to production in a legal proceeding.

Sec. 209.006. NOTICE REQUIRED BEFORE ENFORCEMENT ACTION. (a) Before a property owners' association may suspend an owner's right to use a common area, file a suit against an owner other than a suit to collect a regular or special assessment or foreclose under an association's lien, charge an owner for property damage, or levy a fine for a violation of the restrictions or bylaws or rules of the association, the association or its agent must give written notice to the owner.

(b) The notice must:

(1) describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the association from the owner; and

(2) inform the owner that the owner:

(A) is entitled to a reasonable period to cure the violation and avoid the fine or suspension unless the owner was given notice and a reasonable opportunity to cure a similar violation within the preceding 12 months; and

(B) may request a hearing under Section 209.007 on or before the 30th day after the date the owner receives the notice.

Sec. 209.007. HEARING BEFORE BOARD; ALTERNATIVE DISPUTE RESOLUTION. (a) If the owner is entitled to an opportunity to cure the violation, the owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before a committee appointed by the board of the property owners' association or before the board if the board does not appoint a committee.

(b) If a hearing is to be held before a committee, the notice prescribed by Section 209.006 must state that the owner has the right to appeal the committee's decision to the board by written notice to the board.

(c) The association shall hold a hearing under this section not later than the 30th day after the date the board receives the owner's request for a hearing and shall notify the owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. The board or the owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than 10 days. Additional postponements may be granted by agreement of the parties. The owner or the association may make an audio recording of the meeting.

(d) The notice and hearing provisions of Section 209.006 and this section do not apply if the association files a suit seeking a temporary restraining order or temporary injunctive relief or files a suit that includes foreclosure as a cause of action. If a suit is filed relating to a matter to which those sections apply, a party to the suit may file a motion to compel mediation. The notice and hearing provisions of Section 209.006 and this section do not apply to a temporary suspension of a person's right to use common areas if the temporary suspension is the result of a violation that occurred in a common area and involved a significant and immediate risk of harm to others in the subdivision. The temporary suspension is effective until the board makes a final determination on the suspension action after following the procedures prescribed by this section.

(e) An owner or property owners' association may use alternative dispute resolution services.

Sec. 209.008. ATTORNEY'S FEES. (a) A property owners' association may collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the association relating to collecting amounts, including damages, due the association for enforcing restrictions or the bylaws or rules of the association only if the owner is provided a written notice that attorney's fees and costs will be charged to the owner if the delinquency or violation continues after a date certain.

(b) An owner is not liable for attorney's fees incurred by the association relating to a matter described by the notice under Section 209.006 if the attorney's fees are incurred before the conclusion of the hearing under Section 209.007 or, if the owner

does not request a hearing under that section, before the date by which the owner must request a hearing. The owner's presence is not required to hold a hearing under Section 209.007.

(c) All attorney's fees, costs, and other amounts collected from an owner shall be deposited into an account maintained at a financial institution in the name of the association or its managing agent. Only members of the association's board or its managing agent or employees of its managing agent may be signatories on the account.

(d) On written request from the owner, the association shall provide copies of invoices for attorney's fees and other costs relating only to the matter for which the association seeks reimbursement of fees and costs.

(e) The notice provisions of Subsection (a) do not apply to a counterclaim of an association in a lawsuit brought against the association by a property owner.

(f) The amount of attorney's fees that a property owners' association may include in an indebtedness covered by a property owners' association's assessment lien is limited to the greater of:

(1) one-third of the amount of all actual costs and assessments, excluding attorney's fees, plus interest and court costs, if those amounts are permitted to be included by law or by the restrictive covenants governing the property; or

(2) \$2,500.

(g) Subsection (f) does not prevent a property owners' association from recovering or collecting attorney's fees in excess of the amounts prescribed by Subsection (f) by other means provided by law.

Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN CIRCUMSTANCES. A property owners' association may not foreclose a property owners' association's assessment lien if the debt securing the lien consists solely of:

(1) fines assessed by the association; or

(2) attorney's fees incurred by the association solely associated with fines assessed by the association.

Sec. 209.010. NOTICE AFTER FORECLOSURE SALE. (a) A property owners' association that conducts a foreclosure sale of an owner's lot must send to the lot owner, by certified mail, return receipt requested, not later than the 30th day after the date of the foreclosure sale a written notice stating the date and time the sale occurred and informing the lot owner of the owner's right to redeem the property under Section 209.011.

(b) The notice must be sent by certified mail, return receipt requested, to the property owner's last known mailing address, as reflected in the records of the property owners' association.

(c) Not later than the 30th day after the date the association sends the notice required by Subsection (a), the association must record an affidavit in the real property records of the county in which the lot is located, stating the date on which the notice was sent and containing a legal description of the lot. Any person is entitled to rely conclusively on the information contained in the recorded affidavit.

(d) The notice requirements of this section also apply to the sale of an owner's lot by a sheriff or constable conducted as provided by a judgment obtained by the property owners' association.

Sec. 209.011. RIGHT OF REDEMPTION AFTER FORECLOSURE. (a) A property owners' association or other person who purchases property at a sale foreclosing a property owners' association's assessment lien must commence and

prosecute a forcible entry and detainer action under Chapter 24 to recover possession of the property.

(b) The owner of property in a residential subdivision may redeem the property from any purchaser at a sale foreclosing a property owners' association's assessment lien not later than the earlier of:

(1) the 90th day after the date the owner is served with citation in a forcible entry and detainer action; or

(2) the second anniversary of the date of the foreclosure sale.

(c) A person who purchases property at a sale foreclosing a property owners' association's assessment lien may not transfer ownership of the property to a person other than a redeeming lot owner during the redemption period.

(d) To redeem property purchased by the property owners' association at the foreclosure sale, the lot owner must pay to the association:

(1) all amounts due the association at the time of the foreclosure sale;

(2) interest from the date of the foreclosure sale to the date of redemption on all amounts owed the association at the rate stated in the dedicatory instruments for delinquent assessments or, if no rate is stated, at an annual interest rate of 10 percent;

(3) costs incurred by the association in foreclosing the lien and conveying the property to the redeeming lot owner, including reasonable attorney's fees;

(4) any assessment levied against the property by the association after the date of the foreclosure sale;

(5) any reasonable cost incurred by the association, including mortgage payments and costs of repair, maintenance, and leasing of the property; and

(6) the purchase price paid by the association at the foreclosure sale less any amounts due the association under Subdivision (1) that were satisfied out of foreclosure sale proceeds.

(e) To redeem property purchased at the foreclosure sale by a person other than the property owners' association, the lot owner:

(1) must pay to the association:

(A) all amounts due the association at the time of the foreclosure sale less the foreclosure sales price received by the association from the purchaser;

(B) interest from the date of the foreclosure sale through the date of redemption on all amounts owed the association at the rate stated in the dedicatory instruments for delinquent assessments or, if no rate is stated, at an annual interest rate of 10 percent;

(C) costs incurred by the association in foreclosing the lien and conveying the property to the redeeming lot owner, including reasonable attorney's fees;

(D) any unpaid assessments levied against the property by the association after the date of the foreclosure sale; and

(E) taxable costs incurred in a proceeding brought under Subsection (a); and

(2) must pay to the person who purchased the property at the foreclosure sale:

(A) any assessments levied against the property by the association after the date of the foreclosure sale and paid by the purchaser;

(B) the purchase price paid by the purchaser at the foreclosure sale;

(C) the amount of the deed recording fee;

(D) the amount paid by the purchaser as ad valorem taxes, penalties, and interest on the property after the date of the foreclosure sale;

(E) taxable costs incurred in a proceeding brought under Subsection (a); and

(F) a redemption premium of 25 percent of the aggregate total of the amount paid under Paragraphs (A)-(E).

(f) If a lot owner redeems the property under this section, the purchaser of the property at foreclosure shall immediately execute and deliver to the owner a deed transferring the property to the redeeming lot owner. If a purchaser fails to comply with this section, the lot owner may file a cause of action against the purchaser and may recover reasonable attorney's fees from the purchaser if the lot owner is the prevailing party in the action.

(g) If, before the expiration of the redemption period, the redeeming lot owner fails to record the deed from the foreclosing purchaser or fails to record an affidavit stating that the lot owner has redeemed the property, the lot owner's right of redemption as against a bona fide purchaser or lender for value expires after the redemption period.

(h) The purchaser of the property at the foreclosure sale or a person to whom the person who purchased the property at the foreclosure sale transferred the property may presume conclusively that the lot owner did not redeem the property unless the lot owner files in the real property records of the county in which the property is located:

(1) a deed from the purchaser of the property at the foreclosure sale; or

(2) an affidavit that:

(A) states that the lot owner has redeemed the property; and

(B) contains a legal description of the property.

(i) If the property owners' association purchases the property at foreclosure, all rent and other income collected by the association from the date of the foreclosure sale to the date of redemption shall be credited toward the amount owed the association under Subsection (d), and if there are excess proceeds, they shall be refunded to the lot owner. If a person other than the association purchases the property at foreclosure, all rent and other income collected by the purchaser from the date of the foreclosure sale to the date of redemption shall be credited toward the amount owed the purchaser under Subsection (e), and if there are excess proceeds, those proceeds shall be refunded to the lot owner.

(j) If a person other than the property owners' association is the purchaser at the foreclosure sale, before executing a deed transferring the property to the redeeming lot owner, the purchaser shall obtain an affidavit from the association or its authorized agent stating that all amounts owed the association under Subsection (e) have been paid. The association shall provide the purchaser with the affidavit not later than the 10th day after the date the association receives all amounts owed to the association under Subsection (e). Failure of a purchaser to comply with this subsection does not affect the validity of a redemption by a redeeming lot owner.

(k) Property that is redeemed remains subject to all liens and encumbrances on the property before foreclosure. Any lease entered into by the purchaser of property at a sale foreclosing an assessment lien of a property owners' association is subject to the right of redemption provided by this section and the lot owner's right to reoccupy the property immediately after the redemption.

(l) If a lot owner makes partial payment of amounts due the association at any time before the redemption period expires but fails to pay all amounts necessary to redeem the property before the redemption period expires, the association shall refund any partial payments to the lot owner by mailing payment to the owner's last known address as shown in the association's records not later than the 30th day after the expiration date of the redemption period.

(m) If a lot owner sends by certified mail, return receipt requested, a written request to redeem the property on or before the last day of the redemption period, the lot owner's right of redemption is extended until the 10th day after the date the association and any third party foreclosure purchaser provides written notice to the lot owner of the amounts that must be paid to redeem the property.

(n) After the redemption period and any extended redemption period provided by Subsection (m) expires, the association or third party foreclosure purchaser shall record an affidavit in the real property records of the county in which the property is located stating that the lot owner did not redeem the property during the redemption period or any extended redemption period.

(o) The association or the person who purchased the property at the foreclosure sale may file an affidavit in the real property records of the county in which the property is located that states the date the citation was served under Subsection (b)(1) and contains a legal description of the property. Any person may rely conclusively on the information contained in the affidavit.

(p) The rights of a lot owner under this section also apply if the sale of the lot owner's property is conducted by a constable or sheriff as provided by a judgment obtained by the property owners' association.

Sec. 209.012. POWERS OF PROPERTY OWNERS' ASSOCIATION. In addition to other powers granted by law, a property owners' association subject to this chapter may:

(1) impose fines on property owners for littering within the subdivision;

(2) prohibit property owners from keeping animals on property within the subdivision that disrupt the quiet enjoyment of other property owners within the subdivision;

(3) impose fines on property owners for keeping animals prohibited by the restrictions governing the subdivision on property within the subdivision; and

(4) remove or authorize the removal of an animal described by Subdivision (2) or (3) from property within the subdivision.

SECTION 2. This Act takes effect January 1, 2002.

Floor Amendment No. 1

Amend **CSSB 507** as follows:

(1) In SECTION 1 of the bill, at the end of the heading to added Chapter 209, Property Code (House Committee Report, page 1, lines 7-8) insert "OR WINONAH BLEVINS RESIDENTIAL PROPERTY OWNERS PROTECTION ACT".

(2) In SECTION 1 of the bill, in added Section 209.001, Property Code, between "Texas Residential Property Owners Protection Act" and the period (House Committee Report, page 1, line 10), insert "or Winonah Blevins Residential Property Owners Protection Act".

Floor Amendment No. 2

Amend **CSSB 507** as follows:

(1) In SECTION 1 of the bill, in added Section 209.002(8), Property Code (House Committee Report, page 3, line 1), between "the" and "restrictions", insert "original".

(2) In SECTION 1 of the bill, in added Section 209.002(10), Property Code (House Committee Report, page 3, line 18), between "records" and the period, insert "that are approved by the owners who own in the aggregate at least 75 percent of the lots in the residential subdivision or that are approved in accordance with the restrictions governing the residential subdivision".

(3) In SECTION 1 of the bill, in added Section 209.006, Property Code (House Committee Report, page 6, line 15), between "owner" and the period, insert "by certified mail, return receipt requested".

(4) In SECTION 1 of the bill, add a new Section 209.014, Property Code (House Committee Report, page 17, between lines 9 and 10), to read as follows:

Sec. 209.014. APPROVAL FOR REGULAR AND SPECIAL ASSESSMENTS; DURATION OF ASSESSMENTS. (a) Unless otherwise provided by the restrictions or the property owners' association's articles of incorporation or bylaws, before a regular or special assessment may take effect:

(1) the association shall provide to the property owners in the residential subdivision notice and an opportunity to be heard; and

(2) the assessment must be approved by the owners who own in the aggregate at least 75 percent of the lots in the residential subdivision.

(b) A special assessment may not be assessed for a period greater than one year.

Floor Amendment No. 3

Amend **CSSB 507** as follows:

(1) In SECTION 1 of the bill, in added Section 209.006(b)(2)(A), Property Code (House Committee Report, page 6, lines 22-24), strike "unless the owner was given notice and a reasonable opportunity to cure a similar violation within the preceding 12 months".

(2) In SECTION 1 of the bill, in added Section 209.011(d)(3), Property Code (House Committee Report, page 11, line 27), strike "including reasonable" and substitute "excluding".

(3) In SECTION 1 of the bill, in added Section 209.011(e)(1)(C), Property Code (House Committee Report, page 12, line 24), strike "including reasonable" and substitute "excluding".

(4) In SECTION 1 of the bill, add a new Section 209.013, Property Code (House Committee Report, page 17, between lines 9 and 10) to read as follows:

Sec. 209.013. EXTENSION OF, ADDITION TO, OR MODIFICATION OF RESTRICTIONS; PENALTY. (a) Unless otherwise provided by the restrictions or the property owners' association's articles of incorporation or bylaws, before the extension of, addition to, or modification of the restrictions governing a residential subdivision may take effect:

(1) the association shall provide to the property owners in the residential subdivision notice and an opportunity to be heard; and

(2) the extension of, addition to, or modification of the restrictions must be approved by the owners who own in the aggregate at least 75 percent of the lots in the residential subdivision.

(b) A member of the governing board of the association who violates Subsection (a) is subject to a civil penalty in an amount not to exceed \$5,000 for each violation.

Floor Amendment No. 4

Amend **CSSB 507**, in SECTION 1 of the bill, as follows:

(1) In added Section 209.006(a), Property Code (house committee report, page 6, line 12), between "lien," and "charge,", insert "or".

(2) In added Section 209.006(a), Property Code (house committee report, page 6, lines 13-14), strike "or levy a fine for a violation of the restrictions or bylaws or rules of the association,".

Floor Amendment No. 5

Amend **CSSB 507** as follows:

(1) In SECTION 1 of the bill, in added Section 209.009, Property Code, (House Committee Report, page 9, line 24), between the period and "Δ" insert "(a)".

(2) In SECTION 1 of the bill, in added Section 209.009, Property Code, (House Committee Report, page 10, between lines 2 and 3), insert the following:

(b) A property owner may cure a default in the payment of assessments at any time before the foreclosure sale of the property. If the property owner initiates a payment plan, all proceedings to foreclose the property are stayed for so long as the property owner continues to make timely payments under the payment plan.

Floor Amendment No. 6

Amend **CSSB 507** as follows:

(1) On page 9, line 24, between "CIRCUMSTANCES." and "A property," insert "(a)".

(2) At the end of Subsection 209.009, add:

"(b) A property owners' association shall not conduct a foreclosure sale of the lot unless a designated member of the board of the association has made a personal visit to the owner and explained the board's intent to foreclose and offered the owner the opportunity to rectify the dispute. The designated member must make at least three personal visit attempts. The personal visit by the designated member shall be accompanied by simultaneous hand-delivery of a written notice stating the association's intent to foreclose and the opportunity to rectify. The written notice must be signed and dated by the owner and shall be retained in the association's records. The association shall provide the owner a copy of the signed notice not later than the seventh day after the date of the visit. Failure to provide a copy of the signed notice to the owner in the manner described renders the association's foreclosure power invalid until an additional personal visit is made and an additional written notice is signed and dated by the owner and a copy of the signed notice is provided to the owner in the manner described.

(c) If the owner refuses to sign the written notice, the designated member shall sign and have notarized an affidavit stating the date upon which the personal visit with the owner occurred and that the owner refused to sign the written notice. The affidavit shall be retained in the association's records.

(d) If the personal visit attempts are unsuccessful or if the owner is absent from the property, the designated member must make at least three attempts to contact the owner by telephone. If the designated member successfully contacts the owner by phone, a personal visit must be scheduled and administered in compliance with Subsections (b) and (c). If the attempts to contact the owner by telephone are unsuccessful or the owner is absent for a personal visit scheduled by telephone, the designated member shall leave a copy of the written notice affixed to the front door of the residence. The designated member shall sign and have notarized an affidavit stating the dates upon which the personal visit attempts were made, the dates upon which the telephone contacts were attempted, the date upon which the personal visit scheduled by telephone was to have occurred, and the date upon and the time at which the written notice was attached to the front door of the residence. The affidavit shall be retained in the association's records."

Floor Amendment No. 7

Amend **CSSB 507** as follows:

(1) In SECTION 1 of the bill, in added Chapter 209, Property Code, add a new Section 209.010 to read as follows and renumber existing sections and cross-references in the chapter appropriately:

Sec. 209.010. REIMBURSEMENT FOLLOWING FORECLOSURE OF LIEN FOR NONPAYMENT OF ASSESSMENTS. (a) This section applies to a property owners' association that forecloses a lien on a lot to secure payment of assessments owed to the association by the owner.

(b) If a property owners' association authorizes a foreclosure sale of a lot, the association shall establish a minimum bid price and may not sell the property for less than the minimum bid price. The minimum bid price shall be the greater of:

(1) 80 percent of the value of the property according to the most recent appraisal by the appraisal district established for the county in which the property is located, minus:

(A) the amount owing on any liens of record against the property; and

(B) the amount of any taxes owing on the property, whether or not the taxes are delinquent; or

(2) the amount owed on the debt for which the sale is authorized plus any expenses expected to be attributed to the sale.

(c) In establishing the minimum bid price under Subsection (b), the property owners' association may use any amount applicable under Subsection (b) on or after the 20th day before the date the association mails notice of sale to the owner.

(d) The property owners' association shall mail a preforeclosure notice to the owner not later than the 60th day before the date the notice of sale under Subsection (c) is mailed to the owner. The preforeclosure notice must:

(1) inform the owner that the property owners' association:

(A) intends to foreclose the association's lien on the property; and

(B) will establish a minimum bid price for the foreclosure sale;

(2) request the owner to provide documentary evidence to the association regarding the existence and amount of any lien on the property;

(3) state that if the requested documentary evidence is provided on or before the 40th day after the date the notice is mailed, the minimum bid price will be the greater of:

(A) 80 percent of the value of the property according to the most recent appraisal by the appraisal district established for the county in which the property is located, minus:

(i) the amount owing on any liens of record against the property; and

(ii) the amount of any taxes owing on the property, whether or not the taxes are delinquent; or

(B) the amount owed on the debt for which the sale is authorized plus any expenses expected to be attributed to the sale;

(4) state that if the owner does not provide the requested documentary evidence on or before the 40th day after the date the notice is mailed or provides incomplete information and there are any liens of record against the property, the association may establish a minimum bid price that is the amount owed for the debt for which the sale is authorized plus any expenses expected to be attributed to the sale;

(5) provide the name and address of the person to whom the requested documentary evidence may be provided; and

(6) state the amount the association claims is owed on the debt for which the foreclosure sale will be authorized and the amount the association will add for expenses.

(e) The owner has the burden of ensuring that any documentary evidence reaches the person designated in the preforeclosure notice within the period prescribed by Subsection (d).

(f) The property owners' association has the burden of:

(1) checking the real property records of the county in which all or part of the property is located to determine whether a lien of record has been filed on the property; and

(2) obtaining a statement of the appraised value of the property from the appraisal district established for the county in which the property is located.

(g) If the real property to be sold under this section is the principal residence of the owner, not later than the 20th day after the date the preforeclosure notice is mailed, the property owners' association shall make a reasonable attempt to contact the owner in person to advise the owner regarding the information required to be in the preforeclosure notice. An attempt to contact the owner must be made by a member of the governing body of the association. If no contact is made, the association must make at least three attempts to contact the owner by telephone and three attempts to contact the owner in person at the owner's residence. If the attempts to contact the owner by telephone and in person are not successful, a member of the governing body of the association shall leave an additional copy of the preforeclosure notice affixed to the front door of the residence.

(h) If the property owners' association finds no liens of record filed on the property to be sold, the minimum bid price is 80 percent of the appraised value of the property according to the most recent appraisal by the appraisal district established for the county in which the property is located. If the association finds a lien of record filed on the property and provides a preforeclosure notice as prescribed by this section, and the owner fails to respond to the notice in the period prescribed by Subsection (d):

(1) it is conclusively presumed that the amount owed on the lien equals or exceeds the difference between 80 percent of the appraised value of the property and the amount owed on the debt for which the sale is authorized plus any expenses expected to be attributed to the sale; and

(2) the minimum bid price may be established as the amount owed on the debt for which the sale is authorized plus any expenses expected to be attributed to the sale.

(i) A person does not have a cause of action against a property owners' association for the association's failure to establish a lower minimum bid price.

(j) The owner has a cause of action against the property owners' association for damages caused by the association's failure to set a greater minimum bid price as prescribed by this section. Damages under this subsection are limited to the difference between the greater minimum bid price that the association should have established under this section and the amount owed on the debt for which the sale is authorized plus the expenses of the sale. The owner is also entitled to recover reasonable attorney's fees.

(k) If no other bidder bids the minimum bid price, the property owners' association may hold the property and must resell the property for a price that equals or exceeds the minimum bid price. If the property is held by the association as provided by this subsection and the property was the principal residence of the owner at the time the preforeclosure notice was mailed, the owner may continue to reside on the property until the closing on the resale of the property if all mortgage or other lien payments are current and no taxes owed on the property are delinquent.

(l) If the owner continues to reside on the property after the foreclosure sale, the property owners' association may charge a reasonable rent to be deducted from the amount owed the owner at the time of the resale. If the owner does not pay all mortgage and other lien payments and taxes when due, the association may evict the owner.

(m) When the property is sold to a buyer other than the property owners' association, the proceeds shall be applied in the following priority:

(1) expenses of the sale;

(2) the amount owed on the debt for which the sale was authorized;

(3) any assessments that accrued against the property after the sale was authorized;

(4) the remainder, if any, to be paid to the owner.

(n) Assessments continue to accrue against the property after a foreclosure sale, regardless of who owns the property.

(o) If the owner continues to live on the property after a foreclosure sale as provided by Subsection (k), the owner is responsible for reasonable maintenance of the property. The property owners' association is entitled to make an inspection of the property at a reasonable time on or before the 10th day after the date of the foreclosure sale and once every 60 days thereafter. If the owner does not reasonably maintain the property in a condition as good as or better than the condition of the property on the date of the foreclosure sale, the association may make the needed repairs or maintenance and deduct the reasonable cost of the repairs or maintenance from the amount due the owner at the time of resale.

(p) If the property is held by the property owners' association as provided by Subsection (k) and the property is the principal residence of the owner at the time the preforeclosure notice is mailed and the owner is evicted from the property, on or before the first anniversary of the date the owner moved from the property, the association shall pay the owner:

(1) the full amount due the owner from a resale; or

(2) if the property is not resold, the full amount that would have been due the owner if a resale had been made for the minimum bid price.

(2) Add the following appropriately numbered SECTION and renumber existing SECTIONS of the bill appropriately:

SECTION _____. Section 209.010, Property Code, as added by this Act, applies to a foreclosure sale conducted on or after January 1, 2001.

Floor Amendment No. 8

Amend **CSSB 507** as follows:

On page 11, lines 5 and 6, strike "not later than the earlier of" and substitute "until the later of".

Floor Amendment No. 9

Amend **CSSB 507** as follows:

On page 13, strike lines 8-9.

Floor Amendment No. 10

Amend **CSSB 507** in SECTION 1 of the bill by striking added Section 209.012, Property Code (House Committee Report, page 16, lines 23-27 and page 17, lines 1-9).

Floor Amendment No. 11

Amend **CSSB 507** on page 17 by inserting the following between lines 9 and 10:

Sec. 209.013. SPECIAL ASSESSMENTS. A property owners' association may not levy a special assessment unless the levy is approved by a vote of the property owners in the residential subdivision who own, in the aggregate, over 50 percent of the total number of lots in the subdivision.

Floor Amendment No. 13

Amend **CSSB 507** in SECTION 1 of the bill by adding Section 209.013 to read as follows:

Sec. 209.013. ASSESSMENT PROHIBITED. An association may not impose an individual assessment on an individual unit owner on space owned by the individual unit owner that is not air conditioned if:

(1) the space is part of the structural integrity of a common area or garage; and

(2) the association does not provide services to the space.

Floor Amendment No. 14

Amend **CSSB 507** as follows:

(1) In SECTION 1 of the bill add Section 209.014 to read as follows:

Sec. 209.014. ALLOCATION OF PARKING SPACES. (a) If a dedicatory instrument of a property owners' association allocates parking spaces to owners by easement or fee title, the association shall ensure that each owner maintains the owner's original parking spaces and the number and type of parking spaces designated by the dedicatory instrument.

(b) An owner is entitled to only the number and type of parking spaces designated by the dedicatory instrument.

(c) If the owner is allocated fewer parking spaces than the number of parking spaces designated by the dedicatory instrument, the association shall provide the owner with additional parking spaces in the number designated.

(d) If the dedicatory instrument of an association permits the subdivision or merger of units, the association may not deny permission to an owner to subdivide or merge units on the basis that no parking space would be assigned to the resulting unit or units.

Floor Amendment No. 15

Amend **CSSB 507** in SECTION 1 of the bill by adding Section 209.015 to read as follows:

Sec. 209.015. APPLICABILITY. Sections 209.013 and 209.014 apply only to a condominium development governed by Chapter 82.

Floor Amendment No. 16

Amend **CSSB 507** by adding the following appropriately numbered SECTION and renumbering existing SECTIONS of the bill appropriately:

SECTION _____. (a) In this section, "property owners' association" and "subdivision" have the meaning assigned by Section 209.002, Property Code.

(b) On or after September 1, 2001, and before September 1, 2003, a property owners' association may not foreclose a lien on residential property located within the subdivision whose owners are represented by the association.

(c) This section does not apply to a condominium development governed by Chapter 82, Property Code.

Floor Amendment No. 17

Amend **CSSB 507** by striking SECTION 2 of the bill (Committee printing page 17, line 10) and substituting the following:

SECTION 2. Section 209.011, Property Code, as added by this Act, applies to a foreclosure sale conducted on or after January 1, 2001.

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

The amendments were read.

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

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 507** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Carona, Chair; Ellis, Armbrister, Madla, and Shapiro.

SENATE BILL 310 WITH HOUSE AMENDMENTS

Senator Harris called **SB 310** 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 310** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the continuation and functions of the Railroad Commission of Texas.

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

SECTION 1. Articles 6445a, 6447, 6447b, 6447c, and 6447h, Revised Statutes, are amended to read as follows:

Art. 6445a. SUNSET PROVISION. The Railroad Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2013 [2001].

Art. 6447. THE COMMISSION. Election.—The Railroad Commission of Texas shall be composed of three members, one of whom shall be elected biennially at each general election for a term of six years.

Qualifications.—The members shall be resident citizens of this State, and qualified voters under the Constitution and laws, and not less than twenty-five years of age. The members are subject to the provisions of Chapter 572, Government Code, that apply to elected officers, including the requirements governing personal financial statements, standards of conduct, and conflicts of interest. [~~No member shall be directly or indirectly interested in any railroad, or in any stock, bond, mortgage, security, or earnings of any railroad, and should a member voluntarily become so interested his office shall become vacant, or should he become so interested otherwise than voluntarily, he shall within a reasonable time divest himself of such interest, failing to do this, his office shall become vacant.~~

[~~Shall hold no other office, etc.—No commissioner shall hold any other office of any character, while such commissioner, nor engage in any occupation or business inconsistent with his duties as such commissioner.~~]

Oath, etc.—Before entering upon the duties of his office, each commissioner shall take and subscribe to the official oath and shall in addition thereto[;] swear that he [~~is not directly or indirectly interested in any railroad, nor in the bonds, stock, mortgages, securities, contracts, or earnings of any railroad, and that he~~] will to the best of his ability faithfully and justly execute and enforce the provisions of this title[;] and all laws of this State concerning railroads, which oath shall be filed with the Secretary of State.

Organization.—The commissioners shall elect one of their number chairman. They may make all rules necessary for their government and proceedings. They shall be known collectively as the "Railroad Commission of Texas," and shall have a seal, a star of five points with the words "Railroad Commission of Texas" engraved thereon. They shall be furnished necessary furniture, stationery, supplies and all necessary expenses, to be paid for on the order of the Governor.

Expenses.—The Commissioners shall receive from the State their necessary traveling expenses while traveling on the business of the Commission, which shall include the cost only of transportation while traveling on business for the Commission, upon an itemized statement thereof, sworn to by the party who incurred the expense, and approved by the Commission. Employees of the Commission are entitled to reimbursement for expenses incurred in traveling on the business of the Commission as provided by the General Appropriations Act.

Sessions.—The Commission may hold its sessions at any place in this State when deemed necessary.

Art. 6447b. EQUAL EMPLOYMENT OPPORTUNITY [EMPLOYEE PERFORMANCE]. (a) ~~The commission [or its designee shall develop an intra-agency career ladder program, one part of which shall be the intra-agency posting of all nonentry level positions for at least 10 days before any public posting.~~

~~[(b) The commission or its designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for commission employees must be based on the system established under this subsection.~~

~~[(c) The commission] shall prepare and maintain a written policy statement that implements [plan to assure implementation of] a program of equal employment opportunity to ensure that [whereby] all personnel decisions [transactions] are made without regard to race, color, disability, sex, religion, age, or national origin.~~

~~(b) The policy statement must [plan shall] include:~~

~~(1) personnel policies, including policies relating to [plans for] recruitment, evaluation, selection, [appointment,] training, and promotion of personnel, that show the intent of the commission to avoid the unlawful employment practices described by Chapter 21, Labor Code; and~~

~~(2) an analysis of the extent to which the composition of the commission's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.~~

~~(c) The policy statement must:~~

~~(1) be updated annually;~~

~~(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b) of this article; and~~

~~(3) be filed with the governor's office[, and other personnel practices. The plan shall also include steps reasonably designed to overcome any identified under-utilization of minorities and women in the commission's work force and shall include objectives and goals, timetables for achieving those objectives and goals, and assignments of responsibility for their completion. The plan shall be filed with the governor's office within 60 days after the effective date of this section, cover an annual period, and be updated at least annually. Progress reports shall be submitted to the governor's office within 30 days of November 1 and April 1 of each year and shall include the steps the commission has taken within the reporting period to comply with this requirement of this section].~~

Art. 6447c. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be an employee of the commission employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in a business or industry regulated by the commission; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas [An employee of the commission may not be an officer, employee, or paid consultant of a] trade association in a business or industry regulated by the commission.

(c) ~~(b)~~ A person who is required to register as a lobbyist under Chapter 305, Government Code, may not act as the general counsel to the commission.

(d) ~~(e)~~ The commission[~~, as often as necessary,~~] shall provide to members of the commission and to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's [employees'] responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Art. 6447h. COMPLAINTS. (a) The commission shall maintain a [keep an information] file on [about] each written complaint filed with the commission. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the commission;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(b) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) The [relating to a person who has a license, permit, or certificate of public convenience and necessity from the commission:

[~~(b) If a written complaint is filed with the commission relating to a person who has a license, permit, or certificate of public convenience and necessity from the] commission, at least [as frequently as] quarterly [and] until final disposition of the complaint, [the commission] shall notify the person filing [parties to] the complaint and each person who is a subject of the complaint of the status of the investigation [complaint] unless the notice would jeopardize an undercover investigation. [This section does not apply to complaints under Chapter 91, Natural Resources Code.]~~

SECTION 2. Title 112, Revised Statutes, is amended by adding Articles 6447k, 6447l, 6447m, and 6447n to read as follows:

Art. 6447k. SEPARATION OF POLICY-MAKING AND MANAGEMENT RESPONSIBILITIES. The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the members of the commission and the management responsibilities of the staff of the commission.

Art. 6447l. PUBLIC PARTICIPATION. The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Art. 6447m. EMPLOYEE INCENTIVE PROGRAM. The commission shall provide to commission employees information and training on the benefits and methods of participation in the state employee incentive program.

Art. 6447n. METHOD OF MAKING PAYMENTS TO COMMISSION. (a) The commission may authorize payment, as prescribed by the commission, of regulatory fees, fines, penalties, and charges for goods and services by means of an electronic payment method or a credit card issued by a financial institution chartered by a state or the United States or issued by a nationally recognized credit organization approved by the commission. A payment by the authorized method may be made in person, by telephone, or through the Internet.

(b) The commission may require a person who makes a payment to the commission by means of an electronic payment method or credit card to pay a discount or service charge in an amount reasonable and necessary to reimburse the commission for the costs involved in processing the payment.

(c) The commission may adopt rules as necessary to implement this article.

SECTION 3. Section 81.0521, Natural Resources Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) With each application for an exception to any commission rule contained in Chapter 3 of Part I of Title 16 of the Texas Administrative Code, the applicant shall submit to the commission a fee of \$150 [~~\$50~~].

(c) Two-thirds of the proceeds from this fee, including any penalties collected in connection with the fee, shall be deposited to the oil-field cleanup fund as provided by Section 91.111.

SECTION 4. Subsection (a), Section 81.0522, Natural Resources Code, is amended to read as follows:

(a) With each Natural Gas Policy Act (15 U.S.C. Sections 3301-3432) application, the applicant shall submit to the commission a fee [~~of \$50~~]. The commission shall set the application fee in an amount necessary to cover the cost of the commission's well category determination program but not to exceed \$150.

SECTION 5. Section 81.0531, Natural Resources Code, is amended by amending Subsections (c) and (d) and adding Subsection (e) to read as follows:

(c) In determining the amount of the penalty, the commission shall consider the permittee's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. In determining the amount of the penalty for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety, the commission shall consider the guidelines adopted under Subsection (d).

(d) The commission by rule shall adopt guidelines to be used in determining the amount of the penalty for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety. The guidelines shall include a penalty calculation worksheet that specifies the typical penalty for certain violations, circumstances justifying enhancement of a penalty and the amount of the enhancement, and circumstances justifying a reduction in a penalty and the amount of the reduction. The guidelines shall take into account:

(1) the permittee's history of previous violations, including the number of previous violations;

(2) the seriousness of the violation and of any pollution resulting from the violation;

(3) any hazard to the health or safety of the public;

(4) the degree of culpability;

(5) the demonstrated good faith of the person charged; and

(6) any other factor the commission considers relevant.

(e) A penalty collected under this section shall be deposited to the credit of the oil-field cleanup fund.

SECTION 6. Subchapter C, Chapter 81, Natural Resources Code, is amended by adding Section 81.055 to read as follows:

Sec. 81.055. PIPELINE SYSTEM FINANCIAL RESPONSIBILITY REQUIREMENTS. (a) Not later than March 1, 2002, the commission shall:

(1) study the desirability of requiring an owner, operator, or manager of a pipeline system to obtain liability insurance coverage, a bond, or other evidence of financial responsibility in order to protect the public from the costs resulting from a discharge from the pipeline system; and

(2) report its findings to the legislature and make the report available to the public.

(b) If the commission finds that adoption of such a requirement is desirable, the commission by rule may require an owner, operator, or manager of a pipeline system to obtain evidence of financial responsibility. The rules must specify the appropriate form and amount of that evidence and may require evidence of financial responsibility in different amounts for different pipeline systems, taking into consideration whether the pipeline system:

(1) has a history of discharges or other violations of regulatory requirements; or

(2) is located over a public drinking water supply, a natural resource, or a critical groundwater resource or near a school or populated area.

SECTION 7. Subsection (a), Section 81.116, Natural Resources Code, is amended to read as follows:

(a) An oil-field cleanup regulatory fee is imposed on crude petroleum produced in this state in the amount of five-eighths [~~five-sixteenths~~] of one cent on each barrel of 42 standard gallons.

SECTION 8. Subsection (a), Section 81.117, Natural Resources Code, is amended to read as follows:

(a) An oil-field cleanup regulatory fee is imposed on gas initially produced and saved in this state in the amount of one-fifteenth [~~one-thirtieth~~] of one cent for each thousand cubic feet.

SECTION 9. Sections 85.161 and 85.2021, Natural Resources Code, are amended to read as follows:

Sec. 85.161. WELL OWNERS AND OPERATORS CERTIFICATES. The owner or operator of any [~~an oil or gas~~] well subject to the jurisdiction of the commission [~~, before connecting with any oil or gas pipeline,~~] shall secure from the commission a certificate showing compliance with the oil or gas conservation laws of the state and conservation rules and orders of the commission.

Sec. 85.2021. DRILLING PERMIT FEE. (a) With each application or materially amended application for a permit to drill, deepen, plug back, or reenter a well, the applicant shall submit to the commission a nonrefundable fee of:

- (1) \$200 [~~\$100~~] if the total depth of the well is 2,000 feet or less;
- (2) \$225 [~~\$125~~] if the total depth of the well is greater than 2,000 feet but less than or equal to 4,000 feet;
- (3) \$250 [~~\$150~~] if the total depth of the well is greater than 4,000 feet but less than or equal to 9,000 feet;
- (4) \$300 [~~\$200~~] if the total depth of the well is greater than 9,000 feet.

(b) An applicant shall submit an additional nonrefundable fee of \$200 when a Rule 37 spacing or a Rule 38 density exception review is requested.

(c) An applicant shall submit an additional nonrefundable fee of \$150 [~~\$50~~] when requesting that the commission expedite the application for a permit to drill, deepen, plug back, or reenter a well.

(d) [~~(c)~~] With each application for an extension of time to plug a well pursuant to commission rules, an applicant shall submit to the commission a nonrefundable fee of \$300 [~~\$100~~], unless the applicant has filed a bond under Section 91.1041 or Section 91.1042 of this code.

(e) [~~(d)~~] All fees collected under this section shall be deposited in the state oil-field cleanup fund.

SECTION 10. Effective September 1, 2004, Subdivision (2), Subsection (a), Section 89.002, Natural Resources Code, is amended to read as follows:

(2) "Operator" means a person who assumes responsibility for the physical operation and control of a well as shown by a form the person files with the commission and the commission approves. The commission may not require a person to assume responsibility for a well as a condition to being permitted to assume responsibility for another well. In the event of a sale or conveyance of an unplugged well or the right to operate an unplugged well, a person ceases being the operator for the purpose of Section 89.011 only if the well was in compliance with commission rules relating to safety or the prevention or control of pollution at the time of sale or conveyance and once the person who acquires the well or right to operate the well:

(A) specifically identifies the well as a well for which the person assumes plugging responsibility on forms required and approved by the commission;

(B) has a commission-approved organization report as required by Section 91.142;

(C) has a commission-approved bond or letter of credit [~~other form of financial security~~] under Sections 91.103-91.107 covering the well; and

(D) places the well in compliance with commission rules.

SECTION 11. Subsection (c), Section 89.043, Natural Resources Code, is amended to read as follows:

(c) Not later than [~~On or before~~] the 30th day before the date the commission enters into a contract to plug a delinquent inactive well, the commission shall send a notice by certified mail to the operator of the well at the address last reported to the commission as required by Section 91.142 and commission rules. The notice shall direct the operator to plug the well and shall state that:

(1) the commission may plug the well and foreclose its statutory lien under Section 89.083 unless the operator requests a hearing not later than the 10th day after the date the operator receives the notice;

(2) if the commission forecloses its statutory lien under Section 89.083 [~~plugs the well~~], all well-site equipment will be presumed to have been abandoned and the commission may dispose of the equipment and hydrocarbons from the well as provided by Section 89.085;

(3) if the commission plugs the well, the commission:

(A) by order may require the operator to reimburse the commission for the plugging costs; or

(B) may request the attorney general to file suit against the operator to recover those costs; [~~and~~]

(4) the commission has a statutory lien on all well-site equipment under Section 89.083; and

(5) the lien described by Subdivision (4) is foreclosed by operation of law if the commission does not receive a valid and timely request for a hearing before the 15th day after the date the notice is mailed.

SECTION 12. Subsection (c), Section 89.083, Natural Resources Code, is amended to read as follows:

(c) The lien may be foreclosed by judicial action or commission order at any time after notice and an opportunity for a hearing. If notice is mailed under Section 89.043 and if the lien is not previously foreclosed, the lien is foreclosed by operation of law on the 15th day after the date the notice is mailed unless the commission has received a valid and timely request for a hearing before that date. [~~The commission may foreclose on the lien by entering into a plugging contract.~~] The commission is not required to give notice or an opportunity for a hearing to subordinate lienholders or nonoperators before foreclosing the lien [~~entering into a plugging contract~~].

SECTION 13. Subsections (a), (g), and (h), Section 89.085, Natural Resources Code, are amended to read as follows:

(a) When the commission forecloses its lien under Section 89.083 on [~~enters into a contract to plug~~] a delinquent inactive well, well-site equipment and any amount of hydrocarbons from the well that is stored on the lease are presumed to have been abandoned and may be disposed of by the commission in a commercially reasonable manner by either or both of the following methods:

(1) entering into a plugging contract that provides [~~may provide~~] that the person plugging or cleaning up pollution, or both, will take title to well-site equipment, hydrocarbons from the well that are stored on the lease, or hydrocarbons recovered during the plugging operation in exchange for a sum of money deducted as a credit from the contract price; or

(2) selling the well-site equipment, hydrocarbons from the well that are stored on the lease, or hydrocarbons recovered during the plugging operation [~~may be sold~~] at a public auction or a public or private sale.

(g) The notice required by Subsection (f) of this section must include [~~shall state~~]:

(1) the lease name;

(2) the well number;

(3) the county in which the well is located;

(4) the abstract number of the property on which the lease is situated;

(5) the commission lease or gas well identification number or drilling permit number;

(6) a list of the property disposed of under this section; and

(7) a statement that any person who has a legal or equitable ownership or security interest in the equipment or hydrocarbons that was in existence on the date the commission ~~foreclosed its statutory lien~~ ~~[entered into a contract to plug or clean up the well]~~ may file a claim with the commission.

(h) Not later than the 180th day after the date the well-site equipment or hydrocarbons are disposed of under this section, the commission shall publish a notice that states:

- (1) the lease name;
- (2) the well number;
- (3) the county in which the well is located;
- (4) the commission lease or gas well identification number or drilling permit number; and
- (5) that equipment or hydrocarbons if applicable from the well and lease were disposed of under this section and that any person who has a legal or equitable ownership or security interest in the equipment or hydrocarbons that was in existence on the date the commission ~~foreclosed its statutory lien~~ ~~[entered into a contract to plug or clean up the well]~~ may file a claim with the commission.

SECTION 14. Subsections (a) and (c), Section 89.086, Natural Resources Code, are amended to read as follows:

(a) A person with a legal or equitable ownership or security interest in well-site equipment or hydrocarbons disposed of under Section 89.085 of this code may make a claim against the oil-field cleanup fund unless an element of the transaction giving rise to the interest occurs after the commission ~~forecloses its statutory lien under Section 89.083~~ ~~[enters into a plugging contract]~~.

(c) A claimant must identify the well-site equipment or hydrocarbons in which the claimant has an interest and state the amount of the property interest as of the date the commission ~~foreclosed its statutory lien under Section 89.083~~ ~~[entered into the plugging contract]~~.

SECTION 15. Effective September 1, 2004, Section 91.103, Natural Resources Code, is amended to read as follows:

Sec. 91.103. PERSONS REQUIRED TO EXECUTE BOND OR LETTER OF CREDIT ~~[ALTERNATE FORM OF FINANCIAL SECURITY]~~. Any person, including any firm, partnership, joint stock association, corporation, or other organization, required to file an organization report under Section 91.142 of this code shall execute and file with the commission a bond or letter of credit ~~[alternate form of financial security]~~.

SECTION 16. Subsections (b) and (c), Section 91.104, Natural Resources Code, are amended to read as follows:

- (b) A person required to file a bond under Section 91.103 may choose to file:
- (1) an individual bond as provided under Section 91.1041;
 - (2) a blanket bond as provided under Section 91.1042;
 - (3) a letter of credit in the same amount as required for a blanket bond under Section 91.1042;
 - (4) a nonrefundable annual fee of \$1,000 ~~[\$100]~~, if:
 - (A) the commission determines that individual and blanket bonds as specified by Subdivisions (1) and (2) are not obtainable at reasonable prices; and
 - (B) the person can demonstrate to the commission an acceptable record of compliance with all commission rules, orders, licenses, permits, or certificates that

relate to safety or the prevention or control of pollution for the previous 48 months and the person and, if a firm, partnership, joint stock association, corporation, or other organization, its officers, directors, general partners, or owners of more than 25 percent ownership interest or any trustee:

(i) ~~[(A)]~~ has no outstanding violations of such commission rules, orders, licenses, permits, or certificates;

(ii) ~~[(B)]~~ has paid all administrative, civil, and criminal penalties, if any, relating to any violation of such commission rules, orders, licenses, permits, or certificates; and

(iii) ~~[(C)]~~ has paid all reimbursements of any costs and expenses incurred by the commission in relation to any violation of such commission rules, orders, licenses, permits, or certificates; or

(5) ~~[(4)]~~ a nonrefundable annual fee equal to 12-1/2 ~~[three]~~ percent of the bond that otherwise would be required~~;~~ or

~~[(5) to give a first lien on tangible personal property associated with oil and gas production whose salvage value equals the value of an individual bond under Section 91.1041 or the value of a blanket bond under Section 91.1042 that otherwise would be required].~~

(c) A person who chooses to file a form of financial security other than a bond or letter of credit shall also submit a fee of \$300 ~~[\$100]~~ for each application to extend the time to plug a well in accordance with Section 85.2021 ~~[of this code]~~.

SECTION 17. Effective September 1, 2004, Section 91.104, Natural Resources Code, is amended to read as follows:

Sec. 91.104. BONDS AND LETTERS OF CREDIT ~~[ALTERNATE FORMS OF FINANCIAL SECURITY]~~. (a) The commission shall require a bond or letter of credit ~~[an alternate form of financial security]~~ to be filed with the commission as provided by Subsection (b) of this section.

(b) A person required to file a bond under Section 91.103 may choose to file:

(1) an individual bond as provided under Section 91.1041;

(2) a blanket bond as provided under Section 91.1042; or

(3) a letter of credit in the same amount as required for a blanket bond under Section 91.1042 ~~[nonrefundable annual fee of \$100, if the person can demonstrate to the commission an acceptable record of compliance with all commission rules, orders, licenses, permits, or certificates that relate to safety or the prevention or control of pollution for the previous 48 months and the person and, if a firm, partnership, joint stock association, corporation, or other organization, its officers, directors, general partners, or owners of more than 25 percent ownership interest or any trustee:~~

~~[(A) has no outstanding violations of such commission rules, orders, licenses, permits, or certificates;~~

~~[(B) has paid all administrative, civil, and criminal penalties, if any, relating to any violation of such commission rules, orders, licenses, permits, or certificates; and~~

~~[(C) has paid all reimbursements of any costs and expenses incurred by the commission in relation to any violation of such commission rules, orders, licenses, permits, or certificates;~~

~~[(4) a nonrefundable annual fee equal to three percent of the bond that otherwise would be required; or~~

~~[(5) to give a first lien on tangible personal property associated with oil and gas production whose salvage value equals the value of an individual bond under Section 91.1041 or the value of a blanket bond under Section 91.1042 that otherwise would be required].~~

~~[(c) A person who chooses to file a form of financial security other than a bond shall also submit a fee of \$100 for each application to extend the time to plug a well in accordance with Section 85.2021 of this code.]~~

SECTION 18. Sections 91.1041 and 91.1042, Natural Resources Code, are amended to read as follows:

Sec. 91.1041. INDIVIDUAL BOND. (a) A person required to file a bond under Section 91.103 who operates one or more wells may file a bond in an amount equal to \$2 for each foot of well depth for each well.

(b) Notwithstanding Subsection (a), the commission by rule shall set the amount of the bond for an operator of one or more bay or offshore wells at a reasonable amount that exceeds the amount provided by Subsection (a).

Sec. 91.1042. BLANKET BOND. (a) A person required to file a bond under Section 91.103 may file a blanket bond to cover all wells and operations for which a bond is required as follows:

(1) a person who operates 10 or fewer wells or performs other operations shall file a \$25,000 blanket bond;

(2) a person who operates more than 10 but fewer than 100 wells shall file a \$50,000 blanket bond; and

(3) a person who operates 100 or more wells shall file a \$250,000 blanket bond.

(b) Notwithstanding Subsection (a), the commission by rule shall set the amount of the bond for an operator of bay or offshore wells at a reasonable amount that exceeds the amount provided by Subsection (a)(1), (2), or (3), as applicable.

SECTION 19. Effective September 1, 2004, Section 91.107, Natural Resources Code, is amended to read as follows:

Sec. 91.107. NEW BOND OR LETTER OF CREDIT [~~ALTERNATE FORM OF FINANCIAL SECURITY~~]. If a well [~~covered by a bond or alternate form of financial security~~] is transferred, sold, or assigned by its operator, the commission shall require the party acquiring the well to file a new bond or letter of credit [~~alternate form of financial security~~] as provided by this subchapter, and the [~~bond or alternate form of~~] financial security of the prior operator shall continue to be required and to remain in effect until the new bond or letter of credit [~~alternate form of financial security~~] is provided or the commission determines that the financial security previously submitted to the commission by the person acquiring the well complies with this subchapter.

SECTION 20. Section 91.111, Natural Resources Code, is amended by amending Subsections (b) and (c) and adding Subsection (e) to read as follows:

(b) The commission shall certify to the comptroller the date on which the balance in the fund equals or exceeds \$20 [~~\$10~~] million. The oil-field cleanup regulatory fees on oil and gas shall not be collected or required to be paid on or after the first day of the second month following the certification, except that the comptroller shall resume collecting the fees on receipt of a commission certification that the fund has fallen below \$10 [~~\$6~~] million. The comptroller shall continue collecting the fees until collections are again suspended in the manner provided by this subsection.

(c) The fund consists of:

- (1) penalties imposed under Section 85.381 for violation of a law, order, or rule relating to well plugging requirements;
- (2) proceeds from bonds and other financial assurances required by this chapter, subject to the refund provisions of Section 91.1091;
- (3) private contributions, including contributions made under Section 89.084;
- (4) expenses collected under Section 89.083;
- (5) fees imposed under Section 85.2021;
- (6) civil penalties collected for violations of Chapter 89 or of rules or orders relating to plugging that are adopted under this code;
- (7) proceeds collected under Sections 89.085 and 91.115;
- (8) interest earned on the funds deposited in the fund;
- (9) fees collected under Section 91.104;
- (10) civil penalties or costs recovered under Section 91.457 or 91.459;
- (11) oil and gas waste hauler permit application fees collected under Section 29.015, Water Code;
- (12) costs recovered under Section 91.113(f);
- (13) hazardous oil and gas waste generation fees collected under Section 91.605;
- (14) oil-field cleanup regulatory fees on oil collected under Section 81.116;
- (15) oil-field cleanup regulatory fees on gas collected under Section 81.117;
- (16) fees for a reissued certificate collected under Section 85.167;
- (17) fees collected under Section 91.1013;
- (18) fees collected under Section 89.088;
- (19) penalties collected under Section 81.0531; ~~and~~
- (20) fees collected under Section 91.142;
- (21) fees collected under Section 91.653;
- (22) costs recovered under Sections 91.655 and 91.656;
- (23) two-thirds of the fees collected under Section 81.0521; and
- (24) legislative appropriations.

(e) The commission, through the legislative appropriations request process, shall establish specific performance goals for the oil-field cleanup fund for the next biennium, including goals for the number of:

- (1) site investigations and environmental assessments to be conducted;
- (2) abandoned wells to be plugged; and
- (3) surface locations to be remediated.

SECTION 21. Section 91.112, Natural Resources Code, is amended to read as follows:

Sec. 91.112. PURPOSE OF THE FUND. (a) Money in the fund may be used by the commission or its employees or agents for:

(1) conducting a site investigation or environmental assessment to determine:

(A) the nature and extent of contamination caused by oil and gas wastes or other substances or materials regulated by the commission under Section 91.101; and

(B) the measures that should be taken to control or clean up the wastes, substances, or materials described in Paragraph (A);

(2) controlling or cleaning up oil and gas wastes or other substances or materials regulated by the commission under Section 91.101 that are causing or are likely to cause the pollution of surface or subsurface water, consistent with Section 91.113;

(3) plugging abandoned wells and administering or enforcing permits, orders, and rules relating to the commission's authority to prevent pollution under this chapter, Chapter 89, or any other law administered or enforced by the commission under Title 3;

(4) implementing Subchapter N and enforcing rules, orders, and permits adopted or issued under that subchapter; ~~and~~

(5) implementing the voluntary cleanup program under Subchapter O; and

(6) preparing the report required under Subsection (b).

(b) The commission shall submit to the legislature and make available to the public, annually, a report that reviews the extent to which money provided under Section 91.111 has enabled the commission to better protect the environment and enhance the income of the oil-field cleanup fund. The report shall include:

(1) the number of wells plugged, by region;

(2) the number of wells abandoned, by region;

(3) the number of inactive wells not currently in compliance with commission rules, by region;

(4) the status of enforcement proceedings for all wells in violation of commission rules and the time period during which the wells have been in violation, by region in which the wells are located;

(5) the number of surface locations remediated, by region;

(6) a detailed accounting of expenditures of money in the fund, including expenditures for site investigations and environmental assessments, plugging of abandoned wells, remediation of surface locations, and staff salaries and other administrative expenses;

(7) the method by which the commission sets priorities by which it determines the order in which abandoned wells are plugged;

(8) ~~(6)~~ a projection of the amount of money needed for the next biennium for conducting site investigations and environmental assessments, plugging abandoned wells, and remediating surface locations; ~~and~~

(9) ~~(7)~~ the status of implementation of the provisions of Section 89.085 relating to possession and sale of equipment to recover plugging costs; and

(10) the number of sites successfully remediated under the voluntary cleanup program under Subchapter O, by region.

SECTION 22. Subchapter D, Chapter 91, Natural Resources Code, is amended by adding Sections 91.1131 and 91.1135 to read as follows:

Sec. 91.1131. RISK ASSESSMENT STANDARDS; PRIORITIZATION OF HIGH-RISK WELLS. (a) The commission by rule shall establish risk assessment as the guide for:

(1) conducting site investigations and environmental assessments; and

(2) controlling and cleaning up oil and gas wastes and other substances and materials.

(b) Rules adopted under this section must provide for:

(1) determining whether an actual or potential risk exists at a site;

(2) screening contaminants at the site to identify those that pose a risk;

(3) developing cleanup standards based on contamination levels that are protective of human health and the environment; and

(4) establishing a reporting mechanism for informing the commission regarding specific remediation activities.

(c) The commission by rule shall develop a system for:

(1) identifying abandoned wells that pose a high risk of contaminating surface water or groundwater;

(2) periodically testing high-risk wells by conducting a fluid level test or, if necessary, a pressure test; and

(3) giving priority to plugging high-risk wells with compromised casings.

Sec. 91.1135. OIL-FIELD CLEANUP FUND ADVISORY COMMITTEE. (a) In this section, "committee" means the Oil-Field Cleanup Fund Advisory Committee.

(b) The committee is composed of 10 members as follows:

(1) the presiding officer of the senate committee with primary jurisdiction over matters affecting natural resources;

(2) the presiding officer of the house committee with primary jurisdiction over matters affecting energy resources;

(3) one public member appointed by the governor;

(4) one member appointed by the lieutenant governor from the academic field of geology or economics;

(5) one member appointed by the speaker of the house of representatives from the academic field of geology or economics; and

(6) the executive officer, or a person designated by the executive officer, of each of the following organizations:

(A) the Texas Oil and Gas Association;

(B) the Texas Independent Producers and Royalty Owners Association;

(C) the Panhandle Producers and Royalty Owners Association;

(D) the Permian Basin Petroleum Association; and

(E) the Alliance of Energy Partners.

(c) An appointed member of the committee serves at the will of the authority that appointed the member.

(d) The committee shall:

(1) meet at least quarterly with the commission;

(2) receive information about rules proposed by the commission relating to the oil-field cleanup fund;

(3) review recommendations for legislation proposed by the commission; and

(4) monitor the effectiveness of the oil-field cleanup fund.

(e) The commission shall provide quarterly reports to the committee and the Legislative Budget Board that include:

(1) the following information with respect to the period since the last report was provided as well as cumulatively:

(A) the amount of money deposited in the oil-field cleanup fund;

(B) the amount of money spent from the fund;

(C) the balance of the fund;

(D) the number of wells plugged with money from the fund;

(E) the number of sites remediated with money from the fund; and

(F) the number of wells abandoned; and

(2) any additional information or data requested in writing by the committee.

(f) The committee may:

(1) submit to the commission comments of the committee regarding proposed rules relating to the oil-field cleanup fund; and

(2) request reports and other information from the commission as necessary to implement this section.

(g) Not later than November 15 of each even-numbered year, the committee shall report to the governor, lieutenant governor, and speaker of the house of representatives on the committee's activities. The report must include:

(1) an analysis of any problems with the administration of the oil-field cleanup fund; and

(2) recommendations for any legislation needed to address any problems identified with the administration of the fund or otherwise needed to further the purposes of the fund.

SECTION 23. Section 91.142, Natural Resources Code, is amended by adding Subsection (g) to read as follows:

(g) An organization report filed under this section must be accompanied by the following fee:

(1) for an operator of not more than 25 wells, \$300;

(2) for an operator of more than 25 but not more than 100 wells, \$500;

(3) for an operator of more than 100 wells, \$1,000;

(4) for an operator of one or more natural gas pipelines as classified by the commission, \$100;

(5) for an operator of one or more service activities or facilities, including liquids pipelines as classified by the commission, who does not operate any wells, an amount determined by the commission but not less than \$300 or more than \$500; and

(6) for an operator of one or more service activities or facilities, including liquids pipelines as classified by the commission, who also operates one or more wells, an amount determined by the commission based on the sum of the amounts provided by the applicable subdivisions of this subsection but not less than \$300 or more than \$1,000.

SECTION 24. Subsections (a) and (b), Section 91.1013, Natural Resources Code, are amended to read as follows:

(a) With each application for a fluid injection well permit, the applicant shall submit to the commission a nonrefundable fee of \$200 [~~\$100~~]. In this section, "fluid injection well" means any well used to inject fluid or gas into the ground in connection with the exploration or production of oil or gas other than an oil and gas waste disposal well regulated by the commission pursuant to Chapter 27, Water Code.

(b) With each application for a permit to discharge to surface water under this chapter and commission rules, other than a permit for a discharge that meets National Pollutant Discharge Elimination System requirements for agricultural or wildlife use, the applicant shall submit to the commission a nonrefundable fee of \$300 [~~\$200~~].

SECTION 25. Chapter 91, Natural Resources Code, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. RAILROAD COMMISSION
VOLUNTARY CLEANUP PROGRAM

Sec. 91.651. DEFINITIONS. In this subchapter:

(1) "Contaminant" includes a waste, pollutant, or substance regulated by, or that results from an activity under the jurisdiction of, the commission under this chapter, Chapter 141 of this code, or Chapter 27, Water Code.

(2) "Environmental assessment" means the assessment described by Section 91.653.

(3) "Response action" means the cleanup or removal of a contaminant from the environment.

(4) "Voluntary cleanup" means a response action taken under and in compliance with this subchapter.

Sec. 91.652. ELIGIBILITY FOR VOLUNTARY CLEANUP PROGRAM. (a) Any site that is contaminated with a contaminant is eligible for participation in the voluntary cleanup program except the portion of a site that may be subject to a commission order.

(b) A person electing to participate in the voluntary cleanup program must:

(1) enter into a voluntary cleanup agreement as provided by Section 91.655; and

(2) pay all costs of commission oversight of the voluntary cleanup.

Sec. 91.653. APPLICATION TO PARTICIPATE IN VOLUNTARY CLEANUP PROGRAM. (a) A person who desires to participate in the voluntary cleanup program under this subchapter must submit to the commission an application and an application fee as prescribed by this section.

(b) An application submitted under this section must:

(1) be on a form provided by the commission;

(2) contain:

(A) general information concerning:

(i) the person and the person's capability, including the person's financial capability, to perform the voluntary cleanup;

(ii) the site; and

(iii) the name, address, and telephone number of all surface and mineral owners;

(B) other background information requested by the commission;

(C) an environmental assessment of the actual or threatened release of the contaminant at the site; and

(D) if the person applying is not the surface owner, written authorization from the surface owner agreeing to the applicant's participation in the program;

(3) be accompanied by an application fee of \$1,000; and

(4) be submitted according to schedules set by the commission.

(c) The environmental assessment required by Subsection (b) must include:

(1) a legal description of the site;

(2) a description of the physical characteristics of the site;

(3) the operational history of the site to the extent that history is known by the applicant;

(4) information of which the applicant is aware concerning the nature and extent of any relevant contamination or release at the site and immediately contiguous to the site, or wherever the contamination came to be located; and

(5) relevant information of which the applicant is aware concerning the potential for human exposure to contamination at the site.

(d) An application shall be processed in the order in which it is received.

(e) Fees collected under this section shall be deposited to the credit of the oil-field cleanup fund under Section 91.111.

Sec. 91.654. REJECTION OF APPLICATION. (a) The commission may reject an application submitted under Section 91.653 if:

(1) a state or federal enforcement action is pending that concerns the remediation of the contaminant described in the application;

(2) a federal grant requires an enforcement action at the site;

(3) the application is incomplete or inaccurate; or

(4) the site is ineligible under Section 91.652.

(b) If an application is rejected because it is incomplete or inaccurate, the commission, not later than the 45th day after receipt of the application, shall provide the person with a list of all information needed to make the application complete or accurate. A person may resubmit an application once without submitting an additional application fee if the person resubmits the application not later than the 45th day after the date the commission issues notice that the application has been rejected.

(c) If the commission rejects the application, the commission shall:

(1) notify the person that the application has been rejected;

(2) explain the reasons for rejection of the application; and

(3) inform the person that the commission will refund half the person's application fee unless the person indicates a desire to resubmit the application.

Sec. 91.655. VOLUNTARY CLEANUP AGREEMENT. (a) Before the commission evaluates any plan or report detailing the remediation goals and proposed methods of remediation, the person desiring to participate in the voluntary cleanup program must enter into a voluntary cleanup agreement that sets forth the terms and conditions of the evaluation of the reports and the implementation of work plans.

(b) A voluntary cleanup agreement must provide for:

(1) recovery by the commission of all reasonable costs:

(A) incurred by the commission in review and oversight of the person's work plan and reports and as a result of the commission's field activities;

(B) attributable to the voluntary cleanup agreement; and

(C) in excess of the amount of fees submitted by the applicant under Section 91.653;

(2) a schedule of payments to the commission to be made by the person for recovery of all commission costs fairly attributable to the voluntary cleanup program, including direct and indirect costs of overhead, salaries, equipment, and utilities, and legal, management, and support costs; and

(3) appropriate tasks, deliverables, and schedules.

(c) The voluntary cleanup agreement shall:

(1) identify all statutes and rules with which the person must comply;

(2) describe any work plan or report to be submitted for review by the commission, including a final report that provides all information necessary to verify that all work contemplated by the voluntary cleanup agreement has been completed;

(3) include a schedule for submitting the information required by Subdivision (2); and

(4) state the technical standards to be applied in evaluating the work plans and reports, with reference to the proposed future land use to be achieved.

(d) If an agreement is not reached between a person desiring to participate in the voluntary cleanup program and the commission on or before the 30th day after good faith negotiations have begun:

- (1) the person or the commission may withdraw from the negotiations; and
- (2) the commission retains the person's application fee.

(e) The commission may not initiate an enforcement action against a person who is in compliance with this section for the contamination or release that is the subject of the voluntary cleanup agreement or for activity that resulted in the contamination or release.

Sec. 91.656. TERMINATION OF AGREEMENT; COST RECOVERY. (a) The commission or the person in its sole discretion may terminate the agreement by giving 15 days' advance written notice to the other. Only those costs incurred or obligated by the commission before notice of termination of the agreement are recoverable under the agreement if the agreement is terminated.

(b) Termination of the agreement does not affect any right the commission has under other law to recover costs.

(c) If the person does not pay to the commission the state's costs associated with the voluntary cleanup before the 31st day after the date the person receives notice that the costs are due and owing, the attorney general, at the request of the commission, shall bring an action in the name of the state in Travis County to recover the amount owed and reasonable legal expenses, including attorney's fees, witness costs, court costs, and deposition costs.

Sec. 91.657. VOLUNTARY CLEANUP WORK PLANS AND REPORTS. (a) After signing a voluntary cleanup agreement, the person shall prepare and submit the appropriate work plans and reports to the commission.

(b) The commission shall review and evaluate the work plans and reports for accuracy, quality, and completeness. The commission may approve a voluntary cleanup work plan or report or, if a work plan or report is not approved, notify the person concerning additional information or commitments needed to obtain approval.

(c) At any time during the evaluation of a work plan or report, the commission may request the person to submit additional or corrected information.

(d) After considering future land use, the commission may approve work plans and reports submitted under this section that do not require removal or remedy of all discharges, releases, and threatened releases at a site if the partial response actions for the property:

(1) will be completed in a manner that protects human health and the environment;

(2) will not cause, contribute, or exacerbate discharges, releases, or threatened releases that are not required to be removed or remedied under the work plan; and

(3) will not interfere with or substantially increase the cost of response actions to address the remaining discharges, releases, or threatened releases.

Sec. 91.658. CERTIFICATE OF COMPLETION. (a) If the commission determines that a person has successfully completed a voluntary cleanup approved under this subchapter, the commission shall certify that the action has been completed by issuing the person a certificate of completion.

(b) The certificate of completion must:

(1) acknowledge the protection from liability provided by Section 91.659;

(2) indicate the proposed future land use; and

(3) include a legal description of the site and the name of the site's surface and mineral owner and mineral operator at the time the application to participate in the voluntary cleanup program was filed.

(c) If the commission determines that the person has not successfully completed a voluntary cleanup approved under this subchapter, the commission shall notify of this determination the person who undertook the voluntary cleanup and the current surface and mineral owner and mineral operator of the site that is the subject of the cleanup.

Sec. 91.659. PERSONS RELEASED FROM LIABILITY. (a) A person who is not a responsible person under Section 91.113 at the time the person applies to perform a voluntary cleanup:

(1) does not become a responsible person solely because the person signs the application; and

(2) is released, on certification under Section 91.658, from all liability to the state for cleanup of areas of the site covered by the certification, except for releases and consequences that the person causes.

(b) A person who is not a responsible person under Section 91.113 at the time the commission issues a certificate of completion under Section 91.658 is released, on issuance of the certificate, from all liability to the state for cleanup of areas of the site covered by the certificate, except for releases and consequences that the person causes.

(c) The release from liability provided by this section does not apply to a person who:

(1) caused or contributed to the contamination at the site covered by the certificate;

(2) acquires a certificate of completion by fraud, misrepresentation, or knowing failure to disclose material information;

(3) knows at the time the person acquires an interest in the site for which the certificate of completion was issued that the certificate was acquired in a manner provided by Subdivision (2); or

(4) changes land use from the use specified in the certificate of completion if the new use may result in increased risks to human health or the environment.

Sec. 91.660. PERMIT NOT REQUIRED. (a) A state or local permit is not required for removal or remedial action conducted on a site as part of a voluntary cleanup under this subchapter. A person shall coordinate a voluntary cleanup with ongoing federal and state hazardous waste programs.

(b) The commission by rule shall require that the person conducting the voluntary cleanup comply with any federal or state standard, requirement, criterion, or limitation to which the remedial action would otherwise be subject if a permit were required.

SECTION 26. Sections 113.011, 113.014, 113.015, 113.0511, and 113.082, Natural Resources Code, are amended to read as follows:

Sec. 113.011. REGULATION OF LIQUEFIED PETROLEUM GAS ACTIVITIES. The commission shall administer and enforce the laws of this state and the rules and standards of the commission relating to liquefied petroleum gas [DIVISION. There is created and organized a separate and distinct division of the commission known as the liquefied petroleum gas division or the LPG division].

Sec. 113.014. EMPLOYEES. Sufficient employees shall be provided [to the LPG division] for the enforcement of this chapter.

Sec. 113.015. FUNDS FOR FINANCING REGULATION OF LPG ACTIVITIES [DIVISION]. The commission shall look only to the revenue derived from the operation of this chapter and appropriated by the legislature for expenses of regulating [conducting the] liquefied petroleum gas activities [division] and administering this

chapter. [The LPG examination fund is established in the state treasury to be used to pay the costs of training, including examinations, seminars, and continuing education programs, administered or sponsored by the commission pursuant to Sections 113.087 and 113.088 of this code. All fees collected pursuant to Sections 113.088 and 113.090(c) of this code relating to training or registration for qualification to perform LPG-related activities shall be credited to this fund. There is hereby appropriated from the fund to the commission all such fees collected.]

Sec. 113.0511. LIMITATIONS ON RULEMAKING AUTHORITY. (a) The commission may not adopt rules restricting advertising or competitive bidding [or advertising] by a licensee [person regulated by the commission] except to prohibit false, misleading, or deceptive practices [by the person].

(b) In its [~~The commission may not include in any~~] rules to prohibit false, misleading, or deceptive practices, the commission may not include [~~by a person regulated by the commission~~] a rule that:

- (1) restricts the [~~person's~~] use of any medium for advertising;
- (2) restricts the use of a licensee's [~~person's~~] personal appearance or [~~use of his~~] voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the licensee [~~person~~]; or
- (4) restricts the licensee's [~~person's~~] advertisement under a trade name.

Sec. 113.082. CATEGORIES OF LPG ACTIVITIES [~~LICENSEE~~]; FEES. (a) A prospective licensee in LPG may apply to the commission [~~LPG division~~] for a license to engage in any one or more of the following categories of LPG activities:

(1) [~~(A)~~] container manufacturers/fabricators: the manufacture, fabrication, assembly, repair, installation, subframing, testing, and sale of LPG containers, including LPG motor or mobile fuel containers and systems, and the repair and installation of transport and transfer systems[; and the category "A" application and original license fee is an amount not to exceed \$1,000 as determined by the commission; the annual renewal license fee is an amount not to exceed \$600 as determined by the commission];

(2) [~~(B)~~] transport outfitters: the subframing, testing, and sale of LPG transport containers, the testing of LPG storage containers, the installation, testing, and sale of LPG motor or mobile fuel containers and systems, and the installation and repair of transport systems, and motor or mobile fuel systems[; the category "B" application and original license fee is an amount not to exceed \$400 as determined by the commission; the annual renewal license fee is an amount not to exceed \$200 as determined by the commission];

(3) [~~(C)~~] carriers: the transportation of LPG by transport, including the loading and unloading of LPG, and the installation and repair of transport systems[; the category "C" application and original license fee is an amount not to exceed \$1,000 as determined by the commission; the annual renewal license fee is an amount not to exceed \$300 as determined by the commission];

(4) [~~(D)~~] general installers and repairmen: the sale, service, and installation of containers, excluding motor fuel containers, and the service, installation, and repair of piping, certain appliances as defined by rule, excluding recreational vehicle appliances and LPG systems, excluding motor fuel and recreational vehicle systems[; the category "D" application and original license fee is an amount not to exceed \$100 as determined by the commission; the annual renewal license fee is an amount not to exceed \$70 as determined by the commission];

(5) ~~(E)~~ retail and wholesale dealers: the storage, sale, transportation, and distribution of LPG at retail and wholesale, and all other activities included in this section except the manufacture, fabrication, assembly, repair, subframing, and testing of LPG containers, and except the sale and installation of LPG motor or mobile fuel systems that have an engine with a rating of more than 25 horsepower~~;~~ ~~the category "E" application and original license fee is an amount not to exceed \$750 as determined by the commission;~~ ~~the annual renewal license fee is an amount not to exceed \$300 as determined by the commission];~~

(6) ~~(F)~~ cylinder filling: the operation of a cylinder-filling facility, including cylinder filling, the sale of LPG in cylinders, and the replacement of a cylinder valve~~;~~ ~~the category "F" application and original license fee is an amount not to exceed \$100 as determined by the commission;~~ ~~the annual renewal license fee is an amount not to exceed \$50 as determined by the commission];~~

(7) ~~(G)~~ service station: the operation of an LPG service station filling ASME containers designed for motor and mobile fuel~~;~~ ~~the category "G" application and original license fee is an amount not to exceed \$100 as determined by the commission;~~ ~~the annual renewal license fee is an amount not to exceed \$50 as determined by the commission];~~

(8) ~~(H)~~ cylinder dealers: the transportation and sale of LPG in cylinders~~;~~ ~~the category "H" application and original license fee is an amount not to exceed \$1,000 as determined by the commission;~~ ~~the annual renewal license fee is an amount not to exceed \$300 as determined by the commission];~~

(9) ~~(I)~~ service station and cylinder filling: any service station and cylinder activity set out in Subdivisions (6) and (7) ~~[categories "F" and "G" of this section;~~ ~~the category "I" application and original license fee is an amount not to exceed \$150 as determined by the commission;~~ ~~the annual renewal license fee is an amount not to exceed \$70 as determined by the commission];~~

(10) ~~(J)~~ service station and cylinder facilities: the operation of a cylinder-filling facility, including cylinder filling and the sale, transportation, installation, and connection of LPG in cylinders, the replacement of cylinder valves, and the operation of an LPG service station as set out in Subdivision (7) ~~[category "G";~~ ~~the category "J" application and original license fee is an amount not to exceed \$1,000 as determined by the commission;~~ ~~the annual renewal license fee is an amount not to exceed \$300 as determined by the commission];~~

(11) ~~(K)~~ distribution system: the sale and distribution of LPG through mains or pipes and the installation and repair of LPG systems~~;~~ ~~the category "K" application and original license fee is an amount not to exceed \$1,000 as determined by the commission;~~ ~~the annual renewal license fee is an amount not to exceed \$300 as determined by the commission];~~

(12) ~~(L)~~ engine fuel: the sale and installation of LPG motor or mobile fuel containers, and the sale and installation of LPG motor or mobile fuel systems~~;~~ ~~the category "L" application and original license fee is an amount not to exceed \$100 as determined by the commission;~~ ~~the annual renewal license fee is an amount not to exceed \$50 as determined by the commission];~~

(13) ~~(M)~~ recreational vehicle installers and repairmen: the sale, service, and installation of recreational vehicle containers, and the installation, repair, and service of recreational vehicle appliances, piping, and LPG systems, including recreational vehicle motor or mobile fuel systems and containers~~;~~ ~~the category "M"~~

application and original license fee is an amount not to exceed \$100 as determined by the commission; the annual renewal license fee is an amount not to exceed \$70 as determined by the commission];

(14) [~~(N)~~] manufactured housing installers and repairmen: the service and installation of containers that supply fuel to manufactured housing, and the installation, repair, and service of appliances and piping systems for manufactured housing[; the category "N" application and original license fee is an amount not to exceed \$100 as determined by the commission; the annual renewal license fee is an amount not to exceed \$70 as determined by the commission];

(15) [~~(O)~~] testing laboratory: the testing of an LP-gas container, LP-gas motor fuel systems or mobile fuel systems, transfer systems, and transport systems for the purpose of determining the safety of the container or systems for LP-gas service, including the necessary installation, disconnection, reconnecting, testing, and repair of LPG motor fuel systems or mobile fuel systems, transfer systems, and transport systems involved in the testing of containers; [~~the category "O" application and original license fee is an amount not to exceed \$400 as determined by the commission; the annual renewal license fee is an amount not to exceed \$100 as determined by the commission;~~] or

(16) [~~(P)~~] portable cylinder exchange: the operation of a portable cylinder exchange service, where the sale of LP-gas is within a portable cylinder with an LP-gas capacity not to exceed 21 pounds; the portable cylinders are not filled on site, and no other LP-gas activity requiring a license is conducted[; ~~the category "P" application and original license fee is an amount not to exceed \$100 as determined by the commission; the annual renewal license fee is an amount not to exceed \$50 as determined by the commission~~].

(b) The commission by rule shall establish reasonable application and original license fees and renewal fees for each type of license listed in this section.

SECTION 27. Subsections (b) and (c), Section 113.084, Natural Resources Code, are amended to read as follows:

(b) A prospective licensee shall submit the required application together with the original nonrefundable license fee established by the commission under [~~required by~~] Section 113.082 [~~of this code~~] for each type of license [~~category~~] for which an [~~a~~] license application is made. The applicant shall submit additional information and data with each application as the commission may reasonably require.

(c) A licensee shall submit the nonrefundable renewal fee for each type of [~~category for which~~] license [~~is~~] sought along with information and data the commission may reasonably require.

SECTION 28. Section 113.087, Natural Resources Code, is amended by amending Subsections (b), (c), and (i) through (m) and adding Subsections (n) and (o) to read as follows:

(b) Before license issuance, the commission shall require the individual designated as the licensee's representative to the commission to provide good and sufficient proof through examination prepared and administered by the commission of working knowledge of this chapter and rules of the commission which affect the type [~~category~~] of license for which application is made. Thereafter, each licensee shall maintain a qualified representative at all times.

(c) Each individual who will be actively supervising those operations requiring any license under this chapter at any outlet or location, as designated by the

commission, shall be required to provide good and sufficient proof through examination prepared and administered by the commission that the supervisor has a working knowledge of the safety requirements and penalties in this chapter and the rules of the commission which apply to that type [category] of license.

(i) Not later than the 30th day after the date a person takes a licensing [on which an] examination [is administered] under this chapter [section], the commission shall notify the person [each examinee] of the results of the examination.

(j) If the examination is graded or reviewed by a testing service:

(1) the commission shall notify the person of the results of the examination not later than the 14th day after the date the commission receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the commission shall notify the person [examinee] of the reason for the delay before the 90th day.

(k) The commission may require a testing service to notify a person of the results of the person's examination.

(l) [(†)] If requested in writing by a person who fails a [the] licensing examination administered under this chapter [section], the commission shall furnish the person with an analysis of the person's performance on the examination.

(m) [(†)] The commission, by appropriate rule, shall [may] require, in addition to examination requirements as set out in Subsections (b), (c), and (d) of this section:

(1) an examination for technical competence that is validated by a recognized educational testing organization or similar organization; or

(2) attendance at approved academic, trade, professional, or commission-sponsored seminars, other continuing education programs, and periodic reexaminations.

(n) [(†)] Prior to qualifying an individual to perform LP-gas work, the commission may establish by rule an initial course of instruction for any person who has not yet passed the [category of] examination for the LPG activity for which the person seeks qualification; for any person who has not maintained qualified status, as defined by rule; and for any person whose certification has been revoked pursuant to Subchapter F of this code. If an initial course of instruction is established by the commission, it shall be available at least once every 180 [90] days.

(o) [(†)] The commission by rule may exempt from any provision of this section:

(1) a journeyman or master plumber licensed by the Texas State Board of Plumbing Examiners;

(2) a person licensed under the Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes); or

(3) company representatives, operations supervisors, or employees of a testing laboratory that was registered under Section 113.135 prior to the effective date of this subsection.

SECTION 29. Subsections (a) and (c), Section 113.089, Natural Resources Code, are amended to read as follows:

(a) If application is made for a license under [category "E" of] Section 113.082(a)(5) [113.082 of this code] or for any other type of license [category] specified by commission rule, the commission, in addition to other requirements, shall have an actual inspection conducted of any and all facilities, bulk storage equipment, transportation equipment, and dispensing equipment of the applicant to verify

satisfactory compliance with all current safety laws, rules, and practices. The inspection may be waived by the commission on an application resulting solely from a change in legal entities under which a current licensee operates.

(c) A ~~category "E"~~ license under Section 113.082(a)(5) and any other type of license specified by commission rule shall not be issued until the inspection under Subsection (a) of this section verifies the applicant to be in satisfactory compliance with all current safety laws, rules, and practices.

SECTION 30. Subsections (a) and (b), Section 113.090, Natural Resources Code, are amended to read as follows:

(a) The commission by rule may establish reasonable fees for the review of site applications ~~[examination of plans and specifications]~~ related to the installation of containers when site applications ~~[plans and specifications]~~ are reviewed by the commission before such installation is placed into LP-gas service.

(b) The commission by rule may establish reasonable fees for recording the location of containers at public buildings and commercial installations when prior approval of site applications ~~[plans and specifications]~~ is not required.

SECTION 31. Subsections (b), (c), and (d), Section 113.091, Natural Resources Code, are amended to read as follows:

(b) Within 30 days of the notice of denial, an applicant for license under this chapter who is denied a license may request a hearing to determine whether or not the applicant has complied in all respects with the licensing procedure applicable to each type ~~[the category or categories]~~ of license sought. The applicant's request for hearing must be in writing and delivered to the commission ~~[director of the LP-gas division]~~.

(c) A hearing to determine an applicant's compliance with the licensing procedure applicable to each type ~~[the category or categories]~~ of license sought must be scheduled within 30 days following receipt of a request under Subsection (b) of this section.

(d) If the record made at the hearing supports the applicant's claim, the commission shall enter an order in its records to that effect, noting each type of license ~~to [the category or categories for]~~ which the applicant is found entitled ~~[to be licensed]~~, and the commission shall have the license or licenses issued. If the applicant is found unqualified, the commission shall likewise enter an order in its records to that effect, and no license may be issued to the applicant.

SECTION 32. Section 113.093, Natural Resources Code, is amended to read as follows:

Sec. 113.093. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required ~~[issued pursuant to this chapter is renewable on the timely payment or tender of the]~~ renewal ~~[license] fee to the commission~~ before the expiration date of the license ~~[each year]~~. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose ~~[If a person's]~~ license has been expired for ~~[not longer than]~~ 90 days ~~or less~~; ~~the person~~ may renew the license by paying to the commission a ~~[the required]~~ renewal fee that is equal to 1-1/2 times the normally required ~~[and a fee that is one-half of the amount of the]~~ renewal fee ~~[for the license]~~.

(c) A person whose ~~[If a person's]~~ license has been expired for more ~~[longer]~~ than 90 days but less than one year ~~[two years, the person]~~ may renew the license by

paying to the commission a ~~[all unpaid]~~ renewal ~~[fees and a]~~ fee that is equal to two times the normally required ~~[the amount of the unpaid]~~ renewal fee ~~[fees for the license]~~.

(d) A person whose ~~[If a person's]~~ license has been expired for one year ~~[two years]~~ or more ~~[longer, the person]~~ may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the commission a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 30th day before the date a person's license is scheduled to expire, the commission shall send written notice of the impending expiration to the person at the person's last known address according to the records of the commission.

(g) A renewal license will be issued to a licensee as soon as is practicable after compliance with this section, and fulfillment of insurance, examination, and seminar requirements established by this chapter, and submission of any information and data the commission may reasonably require.

(h) ~~[(f)]~~ Renewal ~~[license]~~ fees shall be nonrefundable.

~~[(g) At least 15 days before the expiration of a person's license the commission shall notify the person in writing of the impending license expiration and shall attempt to obtain from the person a signed receipt confirming receipt of the notice.]~~

SECTION 33. Subchapter D, Chapter 113, Natural Resources Code, is amended by adding Section 113.096 to read as follows:

Sec. 113.096. PROVISIONAL LICENSE. (a) The commission may issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the commission relating to the activities regulated under this chapter; and

(3) is sponsored by a person licensed by the commission under this chapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The commission may waive the requirement of Subsection (a)(3) for an applicant if the commission determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the commission approves or denies the provisional license holder's application for a license. The commission shall issue a license under this chapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 113.095; or

(2) the provisional license holder:

(A) passes the part of the examination under Section 113.087 that relates to the applicant's knowledge and understanding of the laws and rules relating to the activities regulated under this chapter in this state;

(B) meets the academic and experience requirements for a license under this chapter; and

(C) satisfies any other licensing requirements under this chapter.

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

(e) The commission may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

SECTION 34. Subsections (d) and (h), Section 113.097, Natural Resources Code, are amended to read as follows:

(d) Each [category "C," "E," "H," or "J"] licensee under Section 113.082 (a)(3), (5), (8), or (10) must carry motor vehicle bodily injury and property damage liability coverage on each motor vehicle, including trailers and semitrailers, used to transport LP-gas. The commission shall establish by rule a reasonable amount of coverage to be maintained, except that coverage shall not be less than the amounts required as evidence of financial responsibility under Chapter 601, Transportation Code.

(h) As required by commission rule, a [category "A," "B," "C," "E," or "O"] licensee under Section 113.082(a)(1), (2), (3), (5), or (15) must carry completed operations or products liability insurance, or both, in a reasonable amount, based on the type or types of licensed activities.

SECTION 35. Subsections (a) and (c), Section 113.098, Natural Resources Code, are amended to read as follows:

(a) As evidence that required insurance has been secured and is in force, certificates of insurance which are approved by the commission [division] shall be filed with the commission [division] before licensing, license renewal, and during the entire period that the license is in effect. Any document filed with the commission [division] in a timely manner which is not completed in accordance with the instructions indicated on the insurance certificate forms supplied by the commission [division], but which complies with the substantive requirements of this section and with the rules adopted under this section may be considered by the commission [division] to be evidence that required insurance has been secured and is in force for a temporary period not to exceed 45 days. During this temporary period, a licensee shall file with the commission [division] an amended certificate of insurance which complies with all procedural and substantive requirements of this section and the rules adopted hereunder.

(c) Cancellation of a certificate of insurance becomes effective on the occurrence of any of the following events and not before:

(1) commission [division] receipt of written notice stating the insurer's intent to cancel a policy of insurance and the passage of time equivalent to the notice period required by law to be given the insured before the insurance cancellation;

(2) receipt by the commission [division] of an acceptable replacement insurance certificate;

(3) voluntary surrender of a license and the rights and privileges conferred by the license;

(4) commission [division] receipt of a statement made by a licensee stating that the licensee is not actively engaging in any operations which require a particular

type of insurance and will not engage in those operations unless and until all certificates of required insurance applicable to those operations are filed with the commission ~~[division]~~; or

(5) written order of commission.

SECTION 36. Subsections (a)-(d), Section 113.099, Natural Resources Code, are amended to read as follows:

(a) A [~~category "C," "E," "H," or "J"~~] licensee or an applicant for a license under Section 113.082(a)(3), (5), (8), or (10) that does not operate or contemplate the operation of a motor vehicle equipped with an LP-gas cargo container and does not transport or contemplate the transportation of LP-gas by vehicle in any manner, may make and file with the commission ~~[division]~~ a statement to that effect in lieu of filing a certificate of motor vehicle bodily injury and property damage insurance.

(b) A licensee or an applicant for a license that does not engage in or contemplate engaging in any operations which would be covered by general liability insurance for a period of time may make and file with the commission ~~[division]~~ a statement to that effect in lieu of filing a certificate of general liability insurance.

(c) A licensee or an applicant for a license that does not employ or contemplate the hiring of an employee or employees to be engaged in LPG-related activities in this state may make and file with the commission ~~[division]~~ a statement to that effect in lieu of filing evidence of coverage of workers' compensation or other alternative form of coverage as provided in this subchapter.

(d) A [~~category "A," "B," "C," "E," or "O"~~] licensee or an applicant for a license under Section 113.082(a)(1), (2), (3), (5), or (15) that does not engage in or contemplate engaging in any LP-gas operations which would be covered by completed operations or products liability insurance, or both, for a period of time may make and file with the commission ~~[division]~~ a statement to that effect in lieu of filing a certificate of insurance.

SECTION 37. The heading to Subchapter F, Chapter 113, Natural Resources Code, is amended to read as follows:

SUBCHAPTER F. DISCIPLINARY ACTION [SUSPENSION AND REVOCATION OF LICENSES AND REGISTRATIONS]

SECTION 38. Subsection (e), Section 113.161, Natural Resources Code, is amended to read as follows:

(e) If the commission [~~or division~~] determines that the probable violation or noncompliance constitutes an immediate danger to the public health, safety, and welfare, it shall require the immediate cessation of the probable violation or noncompliance and proceed with a hearing as provided in Section 113.162 [~~of this code~~].

SECTION 39. Section 113.163, Natural Resources Code, is amended to read as follows:

Sec. 113.163. FINDINGS AND JUDGMENT. (a) The [If the] commission shall revoke, suspend, or refuse to renew a license or registration or shall reprimand a licensee or registrant if the commission finds that the licensee or registrant has violated or failed to comply with or is violating or failing to comply with this chapter or a rule or standard promulgated and adopted under this chapter [~~or both, the commission may suspend the license or registration for a definite period not to exceed 90 days or may revoke the license or registration. If the commission determines that no violation has~~

occurred or is occurring, its order shall so state. Whenever a license or registration is revoked by order of the commission, a new license or registration shall not be issued for at least 90 days from the effective date of the order. Such time period shall be stated in the order].

(b) The commission may place on probation a person whose license or registration is ~~is~~ ~~[has been]~~ suspended. If a license or registration suspension is probated, the commission may require the person:

(1) to report regularly to the commission on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the commission; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the commission in those areas that are the basis of the [under Subsection (a) of this section for a definite period not to exceed one year, but if the commission does place the licensee or registrant on probation and does allow him to continue to operate, the fact that the license or registration has been suspended and the licensee or registrant has been put on probation shall appear in the records of the commission relating to the suspension and] probation.

SECTION 40. Subsection (b), Section 113.233, Natural Resources Code, is amended to read as follows:

(b) Any authorized representative of the commission ~~[LP-Gas Division]~~ may enter any buildings or premises where an accident has occurred in which LP-gas was a probable cause for purposes of investigating the cause, origin, and circumstances of such accident. The commission ~~[LP-Gas Division]~~ may request that any state or local authority having jurisdiction take appropriate action, to the extent permitted by law, as may be necessary for preservation of property and premises.

SECTION 41. Subsection (b), Section 113.243, Natural Resources Code, as amended by Section 2, Chapter 496, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

(b) The fund consists of money from:

(1) fees charged under this subchapter;

(2) the penalties for the late payment of the fee charged under this subchapter;

(3) gifts, grants, or other assistance received by the commission from any source for the purposes of this subchapter;

(4) interest earned on amounts in the fund;

(5) amounts collected by the commission under an agreement with another state in accordance with Section 113.246(e); ~~[and]~~

(6) assessments, rebates on assessments, and other money collected by the commission under the Propane Education and Research Act of 1996 (15 U.S.C. Section 6401 et seq.) or other applicable federal law; and

(7) fees, royalties, or other things of value received from the items described by Subsections (f)(1)(A)-(D).

SECTION 42. Section 113.243, Natural Resources Code, is amended by amending Subsections (c) and (d) and adding Subsections (f) and (g) to read as follows:

(c) The fund may be used only by the commission to pay for activities relating to the specific fuel from which the fee, royalty, or other thing of value was derived or the

specific fuel, if any, for which the gift, grant, or other assistance is given, including direct and indirect costs relating to:

(1) researching all possible uses of LPG and other environmentally beneficial alternative fuels to enhance air quality;

(2) researching, developing, and implementing marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers;

(3) developing and implementing conservation and distribution plans to minimize the frequency and severity of disruptions in the supply of alternative fuels;

(4) developing a public information plan that will provide advisory services relating to alternative fuels to consumers;

(5) developing voluntary participation plans to promote the use of alternative fuels by federal, state, and local agencies;

(6) implementing consumer incentive or rebate programs developed pursuant to Section 113.2435 of this subchapter;

(7) other functions the commission determines are necessary to add a program established by the commission for the purpose of promoting the use of LPG or other environmentally beneficial alternative fuels; and

(8) the administrative costs incurred by the commission under this subchapter.

(d) If a specific fee, royalty, gift, grant, other thing of value, or other assistance is designated for or collected from discrete components of the alternative fuels industry, the fee, royalty, gift, grant, other thing of value, or other assistance shall be deposited in a separate account in the fund.

(f) The commission may:

(1) apply for, register, secure, hold, and protect under the laws of a state, the United States, or a foreign country a patent, copyright, trademark, or other evidence of protection or exclusivity issued for an idea, publication, or other original innovation fixed in a tangible medium, including:

(A) a logo;

(B) a service mark;

(C) a study;

(D) an engineering, architectural, or graphic design;

(E) a manual;

(F) automated systems software;

(G) an audiovisual work; or

(H) a sound recording;

(2) enter into a license agreement with a third party in return for a fee, royalty, or other thing of value; and

(3) waive or reduce the amount of a fee, royalty, or other thing of value to be assessed if the commission determines that the waiver will:

(A) further the goals and missions of the commission's division responsible for alternative fuels research and education; and

(B) result in a net benefit to the state.

(g) Money received under Subsection (f) shall be deposited in a separate account in the fund as provided by Subsection (d), except that any money received by the commission from the items described by Subsections (f)(1)(E)-(H) shall be deposited in the general revenue fund.

SECTION 43. Subchapter J, Chapter 113, Natural Resources Code, as added by Chapter 80, Acts of the 73rd Legislature, Regular Session, 1993, is redesignated as Subchapter K, and the heading to that subchapter is amended to read as follows:

SUBCHAPTER K [J]. LIABILITY OF LICENSE HOLDER

SECTION 44. Chapter 113, Natural Resources Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. TESTING OF LP-GAS SYSTEMS
IN SCHOOL FACILITIES

Sec. 113.351. DEFINITIONS. In this subchapter:

(1) "School district" means:

(A) an entity created under the laws of this state and accredited by the Texas Education Agency under Subchapter D, Chapter 39, Education Code; or

(B) a private school, other than a resident school, approved by the Texas Education Agency under Section 132.056, Education Code.

(2) "Supplier" means an individual or company that sells and delivers liquefied petroleum gas to a school district facility. If more than one individual or company sells and delivers LP-gas to a facility of a school district, each individual or company is a supplier for purposes of this subchapter.

Sec. 113.352. DUTY TO TEST FOR LEAKAGE. (a) Each school district shall perform pressure tests for leakage on the LP-gas piping system in each school district facility at least biennially. The tests must be performed before the beginning of the school year.

(b) The school district may perform the pressure tests on a two-year cycle under which the tests are performed for the LP-gas piping systems of approximately one-half of the facilities each year.

(c) If a school district operates one or more school district facilities on a year-round calendar, the pressure test in each of those facilities must be conducted and reported not later than July 1 of the year in which the test is performed.

(d) A test performed under a municipal code satisfies the pressure testing requirements prescribed by this section.

Sec. 113.353. REQUIREMENTS OF TEST. (a) The school district shall perform the pressure test to determine whether the LP-gas piping system holds at least the amount of pressure specified by the National Fire Protection Association 54, National Fuel Gas Code.

(b) The pressure test must be conducted in accordance with National Fire Protection Association 54.

(c) At the request of a school district, the commission shall assist the district in providing for the certification of an employee of the school district or school, as applicable, to conduct the test and in developing a procedure for conducting the test.

Sec. 113.354. NOTICE OF TEST. (a) A school district shall provide written notice to the commission specifying the date and the result of each pressure test or other inspection of the LP-gas piping system.

(b) Before the introduction of any LP-gas into the LP-gas piping system, the school district shall provide verification to the district's supplier that the piping has been tested in accordance with this subchapter.

(c) The commission shall maintain a copy of the notice provided under Subsection (a) until at least the first anniversary of the date the commission received the notice.

Sec. 113.355. TERMINATION OF SERVICE. A supplier shall terminate service to a school district facility if:

(1) the supplier receives official notification from the firm or individual conducting the test of a hazardous leakage in the facility LP-gas piping system; or

(2) a test at the facility is not performed as required by this subchapter.

Sec. 113.356. REPORT TO BOARD OF TRUSTEES. An identified LP-gas leakage in a school district facility shall be reported to the board of trustees of the district in which the facility is located.

Sec. 113.357. ENFORCEMENT. The commission shall enforce this subchapter.

SECTION 45. Subchapter B, Chapter 116, Natural Resources Code, is amended by adding Section 116.016 to read as follows:

Sec. 116.016. LIMITATIONS ON RULEMAKING AUTHORITY. (a) The commission may not adopt rules restricting advertising or competitive bidding by a licensee or registrant except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the commission may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a licensee or registrant's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the licensee or registrant; or

(4) restricts the licensee or registrant's advertisement under a trade name.

SECTION 46. Subsection (b), Section 116.032, Natural Resources Code, is amended to read as follows:

(b) The commission by rule may establish reasonable fees for each category of license. [A license fee may not exceed \$1,000.]

SECTION 47. Section 116.033, Natural Resources Code, is amended to read as follows:

Sec. 116.033. APPLICATION AND RENEWAL PROCEDURES. (a) The commission shall adopt rules establishing procedures for submitting and processing applications for issuance and renewal of licenses and for registration.

(b) A person who is otherwise eligible to renew a license or registration may renew an unexpired license or registration by paying the required renewal fee to the commission before the expiration date of the license or registration. A person whose license or registration has expired may not engage in activities that require a license or registration until the license or registration has been renewed.

(c) A person whose license or registration has been expired for 90 days or less may renew the license or registration by paying to the commission a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(d) A person whose license or registration has been expired for more than 90 days but less than one year may renew the license or registration by paying to the commission a renewal fee that is equal to two times the normally required renewal fee.

(e) A person whose license or registration has been expired for one year or more may not renew the license or registration. The person may obtain a new license or registration by complying with the requirements and procedures, including the examination requirements, for obtaining an original license or registration.

(f) A person who was licensed or registered in this state, moved to another state, and is currently licensed or registered and has been in practice in the other state for the

two years preceding the date of application may obtain a new license or registration without reexamination. The person must pay to the commission a fee that is equal to two times the normally required renewal fee for the license or registration.

(g) Not later than the 30th day before the date a person's license or registration is scheduled to expire, the commission shall send written notice of the impending expiration to the person at the person's last known address according to the records of the commission.

SECTION 48. Section 116.034, Natural Resources Code, is amended by adding Subsections (d)-(h) to read as follows:

(d) Not later than the 30th day after the date a person takes a licensing or registration examination under this chapter, the commission shall notify the person of the results of the examination.

(e) If the examination is graded or reviewed by a testing service:

(1) the commission shall notify the person of the results of the examination not later than the 14th day after the date the commission receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the commission shall notify the person of the reason for the delay before the 90th day.

(f) The commission may require a testing service to notify a person of the results of the person's examination.

(g) If requested in writing by a person who fails a licensing or registration examination administered under this chapter, the commission shall furnish the person with an analysis of the person's performance on the examination.

(h) The commission shall recognize, prepare, or administer continuing education programs for its licensees and registrants. A licensee or registrant must participate in the programs to the extent required by the commission to keep the person's license.

SECTION 49. Subchapter C, Chapter 116, Natural Resources Code, is amended by adding Sections 116.0345 and 116.0346 to read as follows:

Sec. 116.0345. LICENSE OR REGISTRATION BY ENDORSEMENT. The commission may waive any prerequisite to obtaining a license or registration for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license or registration issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

Sec. 116.0346. PROVISIONAL LICENSE OR REGISTRATION. (a) The commission may issue a provisional license or registration to an applicant currently licensed or registered in another jurisdiction who seeks a license or registration in this state and who:

(1) has been licensed or registered in good standing for at least two years in another jurisdiction, including a foreign country, that has licensing or registration requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the commission relating to the activities regulated under this chapter; and

(3) is sponsored by a person licensed or registered by the commission under this chapter with whom the provisional license or registration holder will practice during the time the person holds a provisional license or registration.

(b) The commission may waive the requirement of Subsection (a)(3) for an applicant if the commission determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license or registration is valid until the date the commission approves or denies the provisional license or registration holder's application for a license or registration. The commission shall issue a license or registration under this chapter to the provisional license or registration holder if:

(1) the provisional license or registration holder is eligible to be licensed or registered under Section 116.0345; or

(2) the provisional license or registration holder:

(A) passes the part of the examination under Section 116.034 that relates to the applicant's knowledge and understanding of the laws and rules relating to the activities regulated under this chapter in this state;

(B) meets the academic and experience requirements for a license or registration under this chapter; and

(C) satisfies any other licensing or registration requirements under this chapter.

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

(e) The commission may establish a fee for provisional licenses or registrations in an amount reasonable and necessary to cover the cost of issuing the license or registration.

SECTION 50. The heading to Section 116.037, Natural Resources Code, is amended to read as follows:

Sec. 116.037. DISCIPLINARY ACTION [SUSPENSION AND REVOCATION OF LICENSE].

SECTION 51. Section 116.037, Natural Resources Code, is amended by amending Subsections (f) and (g) and adding Subsection (h) to read as follows:

(f) The [If the] commission shall revoke, suspend, or refuse to renew a license or registration or shall reprimand the licensee or registrant if the commission finds that the licensee or registrant has violated or failed to comply with or is violating or failing to comply with this chapter or a rule adopted under this chapter[; the commission may suspend the license or registration for a definite period not to exceed 90 days or may revoke the license].

(g) The commission may place on probation a person whose license or registration is suspended. If a license or registration suspension is probated, the commission may require the person:

(1) to report regularly to the commission on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the commission; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

(h) Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule.

SECTION 52. Section 117.012, Natural Resources Code, is amended by adding Subsections (h)-(k) to read as follows:

(h) The commission shall require operators or their designated representatives to communicate and conduct liaison activities with fire, police, and other appropriate public emergency response officials. The liaison activities must be conducted by meetings in person except as provided by this section. An operator or the operator's representative may conduct required community liaison activities as provided by Subsection (i) only if the operator or the operator's representative has made the following efforts to conduct a community liaison meeting in person with the officials:

(1) mailing a written request for a meeting in person to the appropriate officials by certified mail, return receipt requested;

(2) sending a request for a meeting in person to the appropriate officials by facsimile transmission; and

(3) making one or more telephone calls or e-mail message transmissions to the appropriate officials to request a meeting in person.

(i) If the operator or operator's representative cannot arrange a meeting in person after complying with Subsection (h), the operator or the operator's representative shall make the following efforts to conduct community liaison activities by means of a telephone conference call with the officials:

(1) mailing a written request for a telephone conference to the appropriate officials by certified mail, return receipt requested;

(2) sending a request for a telephone conference to the appropriate officials by facsimile transmission; and

(3) making one or more telephone calls or e-mail message transmissions to the appropriate officials to request a telephone conference.

(j) If the operator or the operator's representative has made the efforts required by Subsections (h) and (i) but has not successfully arranged a meeting in person or a telephone conference, the community liaison information required to be conveyed may be delivered by mailing the information by certified mail, return receipt requested.

(k) The commission by rule shall require the owner or operator of each interstate or intrastate hazardous liquid or carbon dioxide pipeline facility any part of which is located within 1,000 feet of a public school to:

(1) develop an emergency response plan in consultation with the fire department in whose jurisdiction the school is located or another local emergency response entity; and

(2) present the plan:

(A) at the first annual budget meeting of the board of trustees of the school district in which the school is located after the plan is developed; and

(B) at subsequent annual budget meetings of the board of trustees of the school district on the request of the board.

SECTION 53. Subtitle D, Title 3, Natural Resources Code, is amended by adding Chapter 118 to read as follows:

CHAPTER 118. PIPELINE ASSESSMENT AND TESTING

Sec. 118.001. AUTHORITY TO REQUIRE PLAN FOR PIPELINE ASSESSMENT OR TESTING. (a) The Railroad Commission of Texas by rule may require an operator to file for commission approval a plan for assessment or testing of a pipeline if the commission finds that:

(1) there is reason to believe that the pipeline may present a hazard to public health or safety;

(2) the commission lacks adequate information to assess the risk to public health or safety presented by the pipeline; or

(3) a plan is necessary for the commission to initiate or complete a pipeline safety investigation.

(b) The Railroad Commission of Texas may take enforcement action against a person who fails to:

(1) submit a required plan; or

(2) participate in a pipeline safety investigation.

Sec. 118.002. PIPELINES FOR WHICH PLAN MAY BE REQUIRED. The rules adopted under this chapter may apply to interstate pipelines, intrastate pipelines, portions of pipeline systems the regulation of which the federal government has temporarily delegated to the Railroad Commission of Texas, or gathering lines, and to pipelines for the transportation of any substance or material under the jurisdiction of the commission, as specified by the commission.

Sec. 118.003. CONTENTS OF PLAN. The rules adopted under this chapter may require that a plan include:

(1) an identification of risk factors associated with a pipeline system, including population density;

(2) information about previous inspections and maintenance;

(3) information about pressure tests;

(4) information about leaks;

(5) information about operating characteristics;

(6) information about corrosion protection methods; and

(7) other information that may assist the Railroad Commission of Texas in assessing the risk to public health or safety presented by the pipeline.

Sec. 118.004. APPROVAL OF PLAN. The Railroad Commission of Texas may approve a plan that complies with rules adopted under this chapter.

Sec. 118.005. CONSEQUENCES OF PLAN APPROVAL. The approval of a plan by the Railroad Commission of Texas does not constitute a certification or representation that the pipeline is in compliance with or exempt from applicable safety standards.

SECTION 54. Subsection (b), Section 101.002, Utilities Code, is amended to read as follows:

(b) Gas utilities may be ~~are by definition~~ monopolies in the areas they serve. As a result, the normal forces of competition that regulate prices in a free enterprise society may ~~do~~ not operate. Public agencies regulate utility rates, operations, and services as a substitute for competition.

SECTION 55. Subsection (d), Section 101.052, Utilities Code, is amended to read as follows:

(d) The appearance of the counsellor in a proceeding does not preclude the appearance of other parties on behalf of residential consumers. The counsellor may ~~not~~ be grouped with any other party representing residential consumers.

SECTION 56. Section 102.001, Utilities Code, is amended to read as follows:

Sec. 102.001. RAILROAD COMMISSION JURISDICTION. (a) The railroad commission has exclusive original jurisdiction over the rates and services of a gas utility;

(1) that distributes ~~[distributing]~~ natural gas or synthetic natural gas in:
 (A) areas outside a municipality; and
 (B) areas inside a municipality that surrenders its jurisdiction to the railroad commission under Section 103.003; and
(2) ~~[- The railroad commission also has exclusive original jurisdiction over the rates and services of a gas utility]~~ that transmits, transports, delivers, or sells natural gas or synthetic natural gas to a gas utility that distributes the gas to the public.

(b) The railroad commission has exclusive appellate jurisdiction to review an order or ordinance of a municipality exercising exclusive original jurisdiction as provided by this subtitle.

SECTION 57. Subchapter A, Chapter 102, Utilities Code, is amended by adding Section 102.006 to read as follows:

Sec. 102.006. POWERS AND DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) The utility division of the State Office of Administrative Hearings shall conduct each hearing in a contested case that is not conducted by one or more members of the railroad commission. A hearing must be conducted in accordance with the rules and procedures adopted by the railroad commission. A court reporter appointed by the railroad commission shall transcribe each hearing.

(b) The railroad commission may delegate to the utility division of the State Office of Administrative Hearings the authority to make a final decision and to issue findings of fact, conclusions of law, and other necessary orders in a proceeding in which there is not a contested issue of fact or law.

(c) The railroad commission by rule shall define the procedures by which it delegates final decision-making authority under Subsection (b).

(d) For purposes of judicial review, an administrative law judge's final decision under Subsection (b) has the same effect as a final decision of the railroad commission unless a member of the commission requests formal review of the decision.

SECTION 58. Section 103.001, Utilities Code, is amended to read as follows:

Sec. 103.001. MUNICIPAL JURISDICTION. To provide fair, just, and reasonable rates and adequate and efficient services, the governing body of a municipality has exclusive original jurisdiction over the rates, operations, and services of a gas utility within the municipality, subject to the limitations imposed by this subtitle, unless the municipality surrenders its jurisdiction to the railroad commission under Section 103.003.

SECTION 59. Subchapter A, Chapter 103, Utilities Code, is amended by adding Section 103.003 to read as follows:

Sec. 103.003. SURRENDER OF MUNICIPAL JURISDICTION TO RAILROAD COMMISSION; REINSTATEMENT OF JURISDICTION. (a) A municipality may elect to have the railroad commission exercise exclusive original jurisdiction over gas utility rates, operations, and services in the municipality by ordinance or by submitting the question of the surrender of its jurisdiction to the voters at a municipal election.

(b) The governing body of a municipality shall submit at a municipal election the question of surrendering its jurisdiction to the railroad commission if the governing body receives a petition signed by a number of qualified voters of the municipality equal to at least the lesser of 20,000 or 10 percent of the number of voters voting in the last preceding general election in the municipality.

(c) A municipality may not elect to surrender its jurisdiction while a case involving the municipality is pending before the railroad commission.

(d) A municipality that surrenders its jurisdiction to the railroad commission may reinstate its jurisdiction. The provisions of this section governing the surrender of jurisdiction apply to the reinstatement of jurisdiction.

SECTION 60. Section 104.003, Utilities Code, is amended by adding Subsection (f) to read as follows:

(f) A capital cost or gas purchase expense is just and reasonable if the capital cost or gas purchase expense is within the range of costs and expenses that would be incurred by a prudent manager at the time and under the circumstances existing at the time the decision to incur the capital cost or gas purchase expense was made.

SECTION 61. Section 104.107, Utilities Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The 150-day period prescribed by Subsection (a)(2) shall be extended for two days for each day the actual hearing on the merits of the case exceeds 15 days.

(c) If the regulatory authority does not make a final determination concerning a schedule of rates before expiration of the applicable suspension period, the regulatory authority is considered to have approved the schedule. This approval is subject to the authority of the regulatory authority thereafter to continue a hearing in progress.

SECTION 62. Subchapter F, Chapter 104, Utilities Code, is amended by adding Section 104.2551 to read as follows:

Sec. 104.2551. ELECTRONIC BILLING. A gas utility or municipally owned utility may transmit the utility's bill for services through the Internet or by other electronic means instead of through the United States mail on the request of a customer of the gas utility or municipally owned utility.

SECTION 63. Section 121.103, Utilities Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) A gas utility that provides gas to a customer does not have an obligation to serve the customer or to maintain the gas supply or physical capacity to serve the customer if the customer:

(1) is a transportation, industrial, commercial, or other similar large-volume contract customer;

(2) is an end-use customer of the gas utility;

(3) reduces or ceases the purchase of natural gas or natural gas service from the gas utility; and

(4) purchases natural gas or natural gas service from another supplier or purchases an alternate form of energy.

(d) Notwithstanding Subsection (a), a gas utility that has provided gas to a commercial customer is obligated to serve that customer if the gas utility has a sufficient gas supply and physical capacity to do so without reducing service to its other customers.

SECTION 64. Section 121.2015, Utilities Code, is amended to read as follows:

Sec. 121.2015. REQUIRED SAFETY RULES. (a) The railroad commission shall adopt rules regarding:

(1) public education and awareness relating to gas pipeline facilities; and

(2) community liaison for responding to an emergency relating to a gas pipeline facility.

(b) The railroad commission shall require operators or their designated representatives to communicate and conduct liaison activities with fire, police, and other appropriate public emergency response officials. The liaison activities must be conducted by meetings in person except as provided by this section. An operator or the operator's representative may conduct required community liaison activities as provided by Subsection (c) only if the operator or the operator's representative has made the following efforts to conduct a community liaison meeting in person with the officials:

(1) mailing a written request for a meeting in person to the appropriate officials by certified mail, return receipt requested;

(2) sending a request for a meeting in person to the appropriate officials by facsimile transmission; and

(3) making one or more telephone calls or e-mail message transmissions to the appropriate officials to request a meeting in person.

(c) If the operator or operator's representative cannot arrange a meeting in person after complying with Subsection (b), the operator or the operator's representative shall make the following efforts to conduct community liaison activities by means of a telephone conference call with the officials:

(1) mailing a written request for a telephone conference to the appropriate officials by certified mail, return receipt requested;

(2) sending a request for a telephone conference to the appropriate officials by facsimile transmission; and

(3) making one or more telephone calls or e-mail message transmissions to the appropriate officials to request a telephone conference.

(d) If the operator or the operator's representative has made the efforts required by Subsections (b) and (c) but has not successfully arranged a meeting in person or a telephone conference, the community liaison information required to be conveyed may be delivered by mailing the information by certified mail, return receipt requested.

SECTION 65. Section 121.206, Utilities Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) In determining the amount of the penalty, the railroad commission shall consider the guidelines adopted under Subsection (d).

(d) The railroad commission by rule shall adopt guidelines to be used in determining the amount of a penalty under this subchapter. The guidelines shall include a penalty calculation worksheet that specifies the typical penalty for certain violations, circumstances justifying enhancement of a penalty and the amount of the enhancement, and circumstances justifying a reduction in a penalty and the amount of the reduction. The guidelines shall take into account:

(1) the person's history of previous violations of Section 121.201 or a safety standard or rule relating to the transportation of gas and gas pipeline facilities adopted under that section, including the number of previous violations;

(2) the seriousness of the violation and of any pollution resulting from the violation; [and]

- (3) any hazard to the health or safety of the public;
- (4) the degree of culpability;
- (5) the demonstrated good faith of the person charged; and
- (6) any other factor the commission considers relevant.

SECTION 66. Subchapter C, Chapter 2003, Government Code, is amended by adding Section 2003.0491 to read as follows:

Sec. 2003.0491. RAILROAD COMMISSION HEARINGS. The utility division shall conduct contested case hearings and may make final decisions and issue findings of fact, conclusions of law, and other necessary orders in other proceedings on behalf of the Railroad Commission of Texas as provided by Section 102.006, Utilities Code. Section 2003.049 applies to a proceeding under this section except as otherwise provided by Section 102.006, Utilities Code.

SECTION 67. The following laws are repealed:

- (1) Chapter 93, Natural Resources Code;
- (2) Subdivision (2), Section 113.002, and Sections 113.012 and 113.013, Natural Resources Code;
- (3) Subsection (b), Section 113.243, Natural Resources Code, as amended by Section 1, Chapter 496, Acts of the 75th Legislature, Regular Session, 1997; and
- (4) Section 113.246, Natural Resources Code, as amended by Section 6, Chapter 496, Acts of the 75th Legislature, Regular Session, 1997.

SECTION 68. (a) Except as otherwise provided by this Act, this Act takes effect September 1, 2001.

(b) The changes in law made by this Act relating to the statutory lien on wells apply only to liens on wells for which the Railroad Commission of Texas sends a notice under Section 89.043, Natural Resources Code, as amended by this Act, on or after the effective date of this Act. Liens on wells for which notice is sent before the effective date of this Act are covered by the law as it existed when the notice was sent, and that law is continued in effect for that purpose.

(c) As soon as practicable on or after the effective date of this Act, the governor, lieutenant governor, and speaker of the house of representatives shall appoint members to the Oil-Field Cleanup Fund Advisory Committee as provided by Section 91.1135, Natural Resources Code, as added by this Act.

(d) Subchapter L, Chapter 113, Natural Resources Code, as added by this Act, applies beginning with the 2001-2002 school year, and each school district that uses liquefied petroleum gas shall perform pressure tests as required by that subchapter.

(e) Section 102.006, Utilities Code, as added by this Act, and Section 2003.0491, Government Code, as added by this Act, apply only to a contested case filed at the Railroad Commission of Texas on or after the effective date of this Act. A contested case filed at the commission before that date is governed by the law in effect at the time the case is filed, and the former law is continued in effect for that purpose.

Floor Amendment No. 1

Amend **CSSB 310** (House committee printing) as follows:

(1) In SECTION 6 of the bill, in added Section 81.055(a), Natural Resources Code (page 10, lines 4-5), strike "commission shall" and substitute "legislature may".

(2) In SECTION 6 of the bill, in added Section 81.055(b), Natural Resources Code (page 10, line 13), strike "commission" and substitute "legislature".

Floor Amendment No. 2

Amend **CSSB 310** on page 10 between SECTIONS 6 and 7 of the bill by inserting the following section, appropriately numbered, and renumbering the subsequent sections accordingly:

SECTION _____. Subchapter C, Chapter 81, Natural Resources Code, is amended by adding Section 81.056 to read as follows:

Sec. 81.056. PIPELINE CONSTRUCTION AND OPERATION PUBLIC NOTIFICATION REQUIREMENTS. (a) Subsections (b) and (c) apply only to a part of a pipeline system that crosses more than three counties for which construction began after September 1, 2001.

(b) A pipeline operator must publish notice in a newspaper of general circulation in each county with a population greater than 10,000 that contains part of the proposed route of the pipeline system. The notice shall be published in the form prescribed by the commission and include the location of the beginning and end points of the proposed part of the system and a listing of each state or federal highway that will be crossed by the proposed part of the system. The notice must be published at least thirty days but no more than one year before the start of construction.

(c) Before approving any permit for the operation of a pipeline required by this chapter or the rules adopted under it, the commission must:

(1) certify that at least ninety days but no more than one year before the date the commission approves the permit the person requesting the permit has provided a copy of the application to:

(A) the county judge of each county that contains part of the proposed route;

(B) the county fire marshal in each county that contains part of the proposed route, if such office has been established by that county; and

(C) the regional water planning group established by Sec. 16.053, Texas Water Code, in each regional water planning area that contains part of the proposed route; and

(2) review and consider comments from members of the public regarding the project for which the permit is being requested.

Floor Amendment No. 3

Amend Floor Amendment No. 2 by Kitchen to **CSSB 310** in Subsection (c)(1)(A), Section 81.056, Natural Resources Code, as added by the amendment (page 2, line 2), between "county judge" and "of each county", by inserting "and commissioners".

Floor Amendment No. 4

Amend **CSSB 310** (House Committee Printing) as follows:

(1) In SECTION 9 of the bill, in amended Subsection 85.2021, Natural Resources Code (page 12, line 6), strike "requested" and substitute "required".

(4) In SECTION 23 of the bill, at the end of added Subdivision (5), Subsection (g), Section 91.142, Natural Resources Code (page 30, line 18), strike "and".

(5) In SECTION 23 of the bill, in added Subdivision (6), Subsection (g), Section 91.142, Natural Resources Code, between "\$1,000" and the period (page 30, line 24), insert the following: ; and

(7) for an entity not currently performing operations under the jurisdiction of the commission, \$300

(6) In SECTION 25 of the bill, in added Subchapter O, Chapter 91, Natural Resources Code, between Sections 91.651 and 91.652 (page 31, between lines 26 and 27), insert the following section, renumber the subsequent sections, and correct the cross-references to those sections accordingly:

Sec. 91.652. PURPOSE. The purpose of the voluntary cleanup program is to provide an incentive to remediate property by removing the liability to the state of lenders, developers, owners, and operators who did not cause or contribute to contamination released at the site covered by the certificate. The program does not replace other voluntary actions and is restricted to voluntary actions.

(7) In SECTION 25 of the bill, in added Subsection (a), Section 91.660, Natural Resources Code (page 40, line 4), strike "hazardous".

(8) In SECTION 44 of the bill, in added Subdivision (1), Section 113.351, Natural Resources Code (page 63, lines 16-21), strike Paragraphs (A) and (B) and substitute the following:

(A) an entity created under the laws of this state and accredited by the Texas Education Agency under Subchapter D, Chapter 39, Education Code;

(B) a private elementary or secondary school, other than a school in a residence; or

(C) a state or regional school for the blind and visually impaired or the deaf under Chapter 30, Education Code.

(9) In SECTION 68 of the bill, in Subsection (d) of the section (page 84, line 11), strike "2001-2002" and substitute "2002-2003".

Floor Amendment No. 5

Amend **CSSB 310** (corrected House committee report) by striking SECTIONS 15-19 of the bill (beginning on page 17, line 13, through page 22, line 8), substituting an appropriately numbered new SECTION to the bill to read as follows, and appropriately renumbering subsequent SECTIONS of the bill:

SECTION _____. (a) Section 91.104, Natural Resources Code, is amended to read as follows:

Sec. 91.104. FINANCIAL SECURITY REQUIRED FOR INACTIVE OPERATORS AND CERTAIN ACTIVE OPERATORS. (a) A person required to file a bond or alternate form of financial security under Section 91.103 who is an inactive operator or who operates one or more land wells and is not involved in any other activities that require the filing of a bond or alternate form of financial security must file a bond, a letter of credit, or a cash deposit at the time of filing or renewing an organization report required by Section 91.142 in an amount equal to:

(1) \$25,000, if the person operates not more than 10 wells;

(2) \$50,000, if the person operates at least 11 but not more than 100 wells; or

(3) \$250,000, if the person operates more than 100 wells.

(b) In addition to the financial security requirements of Subsection (a), a person required to file a bond or alternate form of financial security under Section 91.103 who operates one or more bay or offshore wells must file the bond, letter of credit, or cash deposit at the time of filing or renewing an organization report required by Section 91.142 in a reasonable amount established by commission rule that exceeds the amount provided by Subsection (a)(1), (2), or (3), as applicable.

(c) An operator seeking to assume operatorship of an active or inactive well must file a bond, letter of credit, or cash deposit in the appropriate amount under this section before the commission may approve the transfer of operatorship. A transfer of a well from one entity to another entity under common operatorship is a transfer for purposes of this subsection.

(d) The bond, letter of credit, or cash deposit amounts prescribed by this section may be used only for actual well plugging and surface remediation. ~~[BONDS AND ALTERNATE FORMS OF FINANCIAL SECURITY. (a) The commission shall require a bond or an alternate form of financial security to be filed with the commission as provided by Subsection (b) of this section.~~

~~[(b) A person required to file a bond under Section 91.103 may choose to file:~~

~~[(1) an individual bond as provided under Section 91.1041;~~

~~[(2) a blanket bond as provided under Section 91.1042;~~

~~[(3) a nonrefundable annual fee of \$100, if the person can demonstrate to the commission an acceptable record of compliance with all commission rules, orders, licenses, permits, or certificates that relate to safety or the prevention or control of pollution for the previous 48 months and the person and, if a firm, partnership, joint stock association, corporation, or other organization, its officers, directors, general partners, or owners of more than 25 percent ownership interest or any trustee:~~

~~[(A) has no outstanding violations of such commission rules, orders, licenses, permits, or certificates;~~

~~[(B) has paid all administrative, civil, and criminal penalties, if any, relating to any violation of such commission rules, orders, licenses, permits, or certificates; and~~

~~[(C) has paid all reimbursements of any costs and expenses incurred by the commission in relation to any violation of such commission rules, orders, licenses, permits, or certificates;~~

~~[(4) a nonrefundable annual fee equal to three percent of the bond that otherwise would be required; or~~

~~[(5) to give a first lien on tangible personal property associated with oil and gas production whose salvage value equals the value of an individual bond under Section 91.1041 or the value of a blanket bond under Section 91.1042 that otherwise would be required.~~

~~[(c) A person who chooses to file a form of financial security other than a bond shall also submit a fee of \$100 for each application to extend the time to plug a well in accordance with Section 85.2021 of this code.]~~

(b) Section 91.109, Natural Resources Code, is amended to read as follows:

Sec. 91.109. FINANCIAL SECURITY FOR PERSONS INVOLVED IN ACTIVITIES OTHER THAN OPERATION OF WELLS ~~[DISPOSAL SITE BOND]~~.

(a) A person applying for or acting under a commission permit to store, handle, treat, reclaim, or dispose of oil and gas waste may be required by the commission to maintain a performance bond or other form of financial security conditioned that the permittee will operate and close the storage, handling, treatment, reclamation, or disposal site in accordance with state law, commission rules, and the permit to operate the site. However, this section does not authorize the commission to require a bond or other form of financial security for saltwater disposal pits, emergency saltwater storage pits (including blow-down pits), collecting pits, or skimming pits provided that such pits

are used in conjunction with the operation of an individual oil or gas lease. Subject to the refund provisions of Section 91.1091 of this code, proceeds from any bond or other form of financial security required by this section shall be placed in the oil-field cleanup fund. Each bond or other form of financial security shall be renewed and continued in effect until the conditions have been met or release is authorized by the commission.

(b) In addition to the financial security requirements of Subsection (a) and Section 91.104(b), a person required to file a bond or alternate form of financial security under Section 91.103 who is involved in activities other than the operation of wells must file the bond, letter of credit, or cash deposit at the time of filing or renewing an organization report required by Section 91.142 in an amount equal to:

(1) \$250,000; or

(2) a lesser amount determined by the commission if the person is able to demonstrate that the risk associated with an operation or group of operations warrants a lesser amount.

(c) The changes in law made by Sections 91.104(a) and (b) and 91.109, Natural Resources Code, as amended by this section, apply only to a person required on or after September 1, 2004, to file a bond or alternate financial security under Section 91.103, Natural Resources Code. A person required to file a bond or alternate financial security under that section before that date is governed by the law in effect on the date the bond or security is required to be filed, and the former law is continued in effect for that purpose. The changes made by Section 91.104(c), Natural Resources Code, as added by this section, apply on or after the effective date of this Act to a person required by that section to file a bond, letter of credit, or cash deposit.

Floor Amendment No. 6

Amend Floor Amendment No. 5 by Farabee to **CSSB 310**, in the SECTION of the bill added by the amendment, by striking Subsection (c) of the section (page 4, lines 18-29) and substituting the following:

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

(d) The changes in law made by Sections 91.104(a) and (b) and 91.109, Natural Resources Code, as amended by this section, apply only to a person required on or after the effective date of this section to file a bond or alternate financial security under Section 91.103, Natural Resources Code. A person required to file a bond or alternate financial security under that section before that date is governed by the law in effect on the date the bond or security is required to be filed, and the former law is continued in effect for that purpose. The changes made by Section 91.104(c), Natural Resources Code, as added by this section, apply on or after the effective date of this section to a person required by that section to file a bond, letter of credit, or cash deposit.

Floor Amendment No. 7

Amend **CSSB 310** between SECTIONS 10 and 11 of the bill (House Committee Printing page 13, between lines 15 and 16) by inserting the following section, appropriately numbered, and renumbering the subsequent sections accordingly:

SECTION _____. Section 89.011, Natural Resources Code, is amended to read as follows:

Sec. 89.011. DUTY OF OPERATOR. (a) The operator of a well shall properly plug the well when required and in accordance with the commission's rules that are in effect at the time of the plugging.

(b) If useable quality water zones are present, the operator shall verify the placement of the plug at the base of the deepest fresh water zone required to be protected. The well is considered to have been properly plugged only when the verification is satisfactory and meets commission requirements.

(c) If, for the use of the surface owner, the operator of the well plugs the well back to produced fresh water, the duty of the operator to properly plug the well ends only when:

(1) the well has been properly plugged in accordance with commission requirements; and

(2) the surface owner has obtained a permit for the well from the groundwater conservation district, if applicable.

(d) Subsections (b) and (c) apply only to wells plugged on or after the effective date of this Act.

(e) The duty of a person to plug an unplugged well that has ceased operation ends only if the person's interest in the well is sold or conveyed while the well is in compliance with rules of the commission relating to safety or the prevention or control of pollution and the provisions of Sections 89.002(a)(2)(A)-(D) have been met. The person acquiring the seller's interest through such a sale or conveyance succeeds the seller as the operator of the well for the purpose of plugging responsibility once the provisions of Sections 89.002(a)(2)(A)-(D) have been met.

Floor Amendment No. 9

Amend **CSSB 310** (House committee printing) as follows:

(1) In the recitation of SECTION 22 of the bill, between "91.1131" and "and" (page 26, line 24), insert ", 91.1132,".

(2) In SECTION 22 of the bill, in the heading of added Section 91.1131, Natural Resources Code (page 26, lines 26-27), strike "; PRIORITIZATION OF HIGH-RISK WELLS".

(3) In SECTION 22 of the bill, in added Section 91.1131(a), Natural Resources Code (page 26, line 27), strike "shall" and substitute "may".

(4) In SECTION 22 of the bill, in added Section 91.1131(c), Natural Resources Code (page 27, line 16), strike "(c)" and substitute:

Sec. 91.1132. PRIORITIZATION OF HIGH-RISK WELLS.

Floor Amendment No. 10

Amend **CSSB 310** as follows:

(1) Strike the recital to SECTION 34 of the bill (page 54, line 27 through page 55, line 1, corrected committee report printing), and substitute the following:

"SECTION 34. Section 113.097, Natural Resources Code, is amended by amending Subsections (d) and (h) and by adding Subsection (l) to read as follows:".

(2) In Section 113.097, Natural Resources Code, as amended by SECTION 34 of the bill, insert a new Subsection (l) (page 55, between lines 14 and 15, corrected committee report printing), to read as follows:

(l) Notwithstanding any other provision of this subchapter, a licensee complies with the workers' compensation insurance requirements of this subchapter if the licensee is a client company of a staff leasing services company regulated under Chapter 91, Labor Code, and the staff leasing company obtains workers' compensation insurance coverage under Section 91.042, Labor Code. For purposes of this section, the staff leasing services company and the licensee are co-employers as provided by the Labor Code.

Floor Amendment No. 12

Amend **CSSB 310** as follows:

(1) Strike SECTIONS 54 and 55 of the bill (house committee printing, page 75, line 17 through page 76, line 2) and renumber subsequent SECTIONS of the bill appropriately.

(2) In SECTION 57 of the bill, strike the third sentence in added Section 102.006(a), Utilities Code (house committee printing, page 77, beginning at the end of line 3 through line 5).

Floor Amendment No. 15

Amend **CSSB 310** in SECTION 59 of the bill, in proposed Section 103.003(c), Utilities Code (House Committee Printing, page 78, line 17), by striking "before the railroad commission".

Floor Amendment No. 17

Amend **CSSB 310** by inserting the following new appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter C, Chapter 105, Utilities Code, is amended by adding Section 105.052 to read as follows:

Sec. 105.052. REIMBURSEMENT OF REASONABLE COSTS. (a) To the extent the regulatory authority determines the costs are reasonable, a gas utility shall reimburse the costs of an affected person or a municipality that is a party to a proceeding that results from a complaint filed against the utility under Section 105.051 to the extent the affected person or party is successful in prosecuting the complaint before a regulatory authority or a court.

(b) Costs for which an affected person or a municipality may receive reimbursement under this section include any reasonable expenses related to the investigation, preparation, and prosecution of the complaint, including the reasonable costs of consultants, accountants, auditors, attorneys, and engineers.

(c) For purposes of this section, an affected person or a municipality may recover reasonable costs not yet paid because payment has been deferred pending a determination of reasonableness by the regulatory authority.

(d) Notwithstanding any other provision of this subtitle, a gas utility may not recover any amounts paid as reimbursement under this section as or through a charge to the utility's customers.

SECTION _____. Section 105.052, Utilities Code, as added by this Act, applies only to a complaint filed with a regulatory authority under Section 105.051, Utilities Code, on or after September 1, 2001.

Floor Amendment No. 19

Amend **CSSB 310** by amending SECTION 64 of the bill as follows:

- (1) On page 81, lines 1-2, strike "the following efforts" and substitute "an effort".
- (2) On page 81, line 3, insert the following after "officials" and before the colon: "by one of the following methods".
- (3) On page 81, line 8, strike "and" and substitute "or".
- (4) On page 81, lines 14-15, strike "the following efforts" and substitute "an effort".
- (5) On page 81, line 16, insert the following after "officials" and before the colon: "by one of the following methods".
- (6) On page 81, line 21, strike "and" and substitute "or".

Floor Amendment No. 20

Amend **CSSB 310** by adding the following appropriately numbered SECTIONS to the bill, and appropriately renumbering subsequent SECTIONS of the bill:

SECTION _____. The heading to Subchapter J, Chapter 121, Utilities Code, is amended to read as follows:

SUBCHAPTER J. TESTING OF NATURAL
GAS PIPING SYSTEMS
IN SCHOOL ~~[DISTRICT]~~ FACILITIES

SECTION _____. Subchapter J, Chapter 121, Utilities Code, is amended by adding Section 121.5005 to read as follows:

Sec. 121.5005. APPLICABILITY. This subchapter applies to a facility of a public elementary or secondary school, including a charter school, or a private elementary or secondary school, but does not apply to a home school.

SECTION _____. Sections 121.501-121.506, Utilities Code, are amended to read as follows:

Sec. 121.501. DEFINITION. In this subchapter, "supplier" means an individual or company that sells and delivers natural gas to a school ~~[district]~~ facility. If more than one individual or company sells and delivers natural gas to a school facility ~~[of a school-district]~~, each individual or company is a supplier for purposes of this subchapter.

Sec. 121.502. DUTY TO PRESSURE TEST. (a) A person responsible for a school facility ~~[Each school-district]~~ shall perform biennial pressure tests on the natural gas piping system in the ~~[each]~~ school ~~[district]~~ facility. The ~~[school-district shall perform the]~~ tests must be performed before the beginning of the school year.

(b) A person responsible for more than one school facility ~~[The school-district]~~ may perform the tests on a two-year cycle under which the person ~~[district]~~ pressure tests the natural gas piping system in approximately one-half of the facilities each year.

(c) If the person responsible for ~~[a school-district operates]~~ one or more school facilities operates the ~~[district]~~ facilities on a year-round calendar, the pressure test in each of those facilities must be conducted and reported not later than July 1 of the year in which the pressure test is performed.

(d) A natural gas piping pressure test performed under a municipal code satisfies the pressure testing requirements prescribed by this section.

Sec. 121.503. REQUIREMENTS OF TEST. (a) The person responsible for a school facility [school district] shall perform the pressure test to determine whether the natural gas piping downstream of the school facility's [district's] meter holds at least normal operating pressure over a specified period determined by the railroad commission.

(b) During the pressure test, each system supply inlet and outlet in the school facility must be closed.

(c) At the request of a person responsible for a school facility [school district], the railroad commission shall assist the person [district] in developing a procedure for conducting the test.

Sec. 121.504. NOTICE OF TEST. (a) A person responsible for a school facility [school district] shall provide written notice to the school's [district's natural gas] supplier specifying the date and result of each pressure test or other inspection.

(b) The supplier shall maintain a copy of the notice until at least the first anniversary of the date on which the supplier received the notice.

Sec. 121.505. TERMINATION OF SERVICE. (a) A supplier shall terminate service to a school [~~district~~] facility if:

(1) the supplier receives official notification from the firm or individual conducting the test of a hazardous natural gas leakage in the facility piping system; or

(2) [~~the district fails to perform~~] a test or other inspection at the facility is not performed as required by this subchapter.

(b) A supplier is not liable for any damages that result from a failure to terminate service as required by Subsection (a)(2) for a facility other than a school district facility.

Sec. 121.506. REPORT OF LEAKAGE [TO BOARD OF TRUSTEES]. An identified natural gas leakage in a school district facility must be reported to the board of trustees of the district in which the facility is located. An identified natural gas leakage in another school facility must be reported to the person responsible for the school facility.

Floor Amendment No. 21

Amend **CSSB 310** between SECTIONS 66 and 67 (House committee printing, page 83, between lines 11 and 12), by inserting the following appropriately numbered SECTION and renumbering the subsequent SECTIONS accordingly:

SECTION _____. (a) Not later than September 1, 2002, the Railroad Commission of Texas shall locate, identify, and inventory by location, type, current use, number, and approximate size all pits and quarries located in this state that are or have been used for the mining or extraction of aggregates, as defined by Section 133.003, Natural Resources Code.

(b) Notwithstanding Subsection (a), the commission is not required to locate, identify, and inventory pits and quarries that are:

(1) five acres or smaller; and

(2) used by a governmental entity for road construction.

(c) The commission may use aerial photography as one method to identify the pits and quarries.

(d) Not later than November 1, 2002, the commission shall submit a report detailing its findings under this section to the governor, the lieutenant governor, and the speaker of the house of representatives.

(e) The commission shall use existing personnel and resources in complying with this section.

Floor Amendment No. 22

Amend **CSSB 310** between SECTIONS 66 and 67 (House committee printing, page 83, between lines 11 and 12) by inserting the following appropriately numbered SECTION and renumbering the subsequent SECTION accordingly:

SECTION _____. (a) The Railroad Commission of Texas, in conjunction with the following entities, shall conduct a comprehensive study of the economic effect of fuel ethanol and biodiesel production in this state:

- (1) the Department of Agriculture;
- (2) the state energy conservation office of the office of the comptroller;
- (3) the Texas Department of Economic Development;
- (4) the Office of Rural Community Affairs, if legislation establishing that office is enacted by the 77th Legislature, Regular Session, 2001, and becomes law; and
- (5) the Agriculture Policy Board, if legislation establishing that board is enacted by the 77th Legislature, Regular Session, 2001, and becomes law.

(b) Not later than January 1, 2003, the Railroad Commission of Texas shall file a report of the study with the governor, the lieutenant governor, and the speaker of the house of representatives.

The amendments were read.

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

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 310** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chair; Brown, Sibley, Duncan, and Lucio.

SENATE BILL 305 WITH HOUSE AMENDMENTS

Senator Harris called **SB 305** 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 305** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and functions of the Parks and Wildlife Department.

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

SECTION 1. Section 11.002, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.002. POLICY IMPLEMENTATION. The commission shall develop and implement policies that clearly separate the policymaking [respective] responsibilities of the commission and the management responsibilities of the director and the department staff.

SECTION 2. Subchapter A, Chapter 11, Parks and Wildlife Code, is amended by adding Section 11.003 to read as follows:

Sec. 11.003. APPLICABILITY OF CERTAIN STATE LAW REQUIREMENTS. A requirement under state law that a law enforcement agency adopt a policy that requires the collection and reporting of information relating to persons detained during traffic stops, that a peace officer report information relating to persons detained during traffic and pedestrian stops, or that a law enforcement agency compile, analyze, and report information relating to persons detained during traffic and pedestrian stops does not apply to the department or an employee of the department.

SECTION 3. Section 11.0111, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0111. SUNSET PROVISION. The Parks and Wildlife Department is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished September 1, 2013 [~~2004~~].

SECTION 4. Section 11.012, Parks and Wildlife Code, is amended by adding Subsection (d) to read as follows:

(d) In making appointments under this section, the governor shall attempt to include persons with expertise in diverse fields, including fields such as historic preservation, conservation, and outdoor recreation.

SECTION 5. Section 11.0121, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0121. QUALIFICATIONS. A person may not be [~~is not eligible for appointment as~~] a public member of the commission if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of conservation, outdoor recreation, or commercial fishing, unless the license is a noncommercial hunting or fishing license or a license issued under Subchapter D, Chapter 43;

(2) is employed by or participates in the management of a business entity or other organization regulated by [~~the department~~] or receiving money [~~funds~~] from the department;

(3) [~~(2)~~] owns or [~~or has,~~] directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by [~~the department~~] or receiving money [~~funds~~] from the department; or

(4) [~~(3)~~] uses or receives a substantial amount of tangible goods, services, or money [~~funds~~] from the department other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

SECTION 6. Section 11.0122, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0122. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the commission and may not be a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

(1) the person is a paid or compensated officer, ~~[An]~~ employee, or paid consultant of a Texas trade [statewide] association in the field of conservation, ~~[or] outdoor recreation, or commercial fishing;~~ or

(2) the person's ~~[may not be a commission member or employee of the department, nor may a person who cohabits with or is the] spouse is an officer, manager, [of a managerial employee] or paid consultant of a Texas trade [statewide] association in the field of conservation, [or] outdoor recreation, or commercial fishing [be a member of the commission or an employee of the department grade 17 or over; including exempt employees, according to the position classification schedule under the General Appropriations Act].~~

SECTION 7. Section 11.0123, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0123. LOBBYIST PROHIBITION ~~[MAY NOT SERVE ON COMMISSION]~~. A person may not be a member of the commission or act as the general counsel to the commission or the department if the person ~~[who]~~ is required to register as a lobbyist under Chapter 305, Government Code, because ~~[by virtue]~~ of the person's ~~[his]~~ activities for compensation ~~[in or]~~ on behalf of a profession related to the operation of the department ~~[commission, may not serve as a member of the commission or act as the general counsel to the commission].~~

SECTION 8. Section 11.0124, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0124. DISCRIMINATION IN APPOINTMENTS PROHIBITED. Appointments to the commission shall be made without regard to the race, color, disability [handicap], sex, religion, age, or national origin of the appointees.

SECTION 9. Section 11.0125, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0125. REMOVAL OF A COMMISSION MEMBER. (a) It is a ground for removal from the commission ~~that [if a member]~~:

(1) a public member does not have at the time of taking office [appointment] the qualifications required by Section 11.0121 ~~[of this code for appointment to the commission];~~

(2) a public member does not maintain during ~~[the]~~ service on the commission the qualifications required by Section 11.0121 ~~[of this code for appointment to the commission];~~

(3) a member is ineligible for membership under [violates a prohibition established by] Section 11.012(c), 11.0122, or 11.0123 ~~[of this code];~~

(4) a member cannot, because of illness or disability, [is unable to] discharge the member's [his] duties for a substantial part [portion] of the member's term [for which he was appointed because of illness or disability]; or

(5) a member is absent from more than half [one-half] of the regularly scheduled commission meetings that [which] the member is eligible to attend during a [each] calendar year without an excuse approved[, except when the absence is excused] by a majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is [was] taken when a ground for removal of a commission member exists [~~of the commission existed~~].

(c) If the director has knowledge that a potential ground for removal exists, the director [~~he~~] shall notify the presiding officer [~~chairman~~] of the commission of the potential [~~such~~] ground. The presiding officer [~~chairman of the commission~~] shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 10. Subchapter B, Chapter 11, Parks and Wildlife Code, is amended by adding Section 11.0126 to read as follows:

Sec. 11.0126. TRAINING PROGRAM FOR COMMISSION MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the department and the commission;
- (2) the programs operated by the department;
- (3) the role and functions of the department;
- (4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the department;
- (6) the results of the most recent formal audit of the department;
- (7) the requirements of:
 - (A) the open meetings law, Chapter 551, Government Code;
 - (B) the public information law, Chapter 552, Government Code;
 - (C) the administrative procedure law, Chapter 2001, Government Code; and
 - (D) other laws relating to public officials, including conflict-of-interest laws; and
- (8) any applicable ethics policies adopted by the department or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 11. Subchapter B, Chapter 11, Parks and Wildlife Code, is amended by adding Section 11.0127 to read as follows:

Sec. 11.0127. TRAINING FOR EMPLOYEES ON STATE INCENTIVE PROGRAM. The director or the director's designee shall provide to agency employees information and training on the benefits and methods of participation in the state employee incentive program under Subchapter B, Chapter 2108, Government Code.

SECTION 12. Section 11.014, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.014. PRESIDING OFFICER [~~CHAIRMAN, VICE-CHAIRMAN~~]. (a) The governor shall designate a member [~~biennially one of the nine members as~~

~~chairman~~] of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor ~~[for a term of two years expiring on January 31 of the succeeding odd-numbered year].~~

~~(b) [The commission shall elect biennially a vice-chairman from among its members for a term of two years expiring on January 31 of the succeeding odd-numbered year.~~

~~[(c)] A vacancy in the office of presiding officer is filled in the same manner as the original designation [chairman or vice-chairman is filled for the unexpired portion of the term in the same manner as the original appointment or election].~~

SECTION 13. Section 11.0151, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0151. PUBLIC HEARINGS. (a) In this section, "major decision" means a decision in which a vote is taken on:

- (1) a rule;
- (2) a proclamation;
- (3) a contract;
- (4) a budget;
- (5) a grant;
- (6) a development plan for a geographical area managed by the department;
- (7) a memorandum of understanding with another governmental entity; or
- (8) any other issue as determined by the commission.

(b) The commission shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

(c) The commission, or any committee of the commission with at least five commission members serving on the committee, shall provide an opportunity for public testimony in an open meeting before making a major decision.

SECTION 14. Section 11.0161, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0161. NOTIFICATION OF COMMISSION ACTIVITIES; COMPLAINTS. (a) The commission shall prepare information of public interest describing the functions of the commission and describing the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the general public and appropriate state agencies.

(b) The department shall maintain a file on each written complaint filed with the department that the department has the authority to resolve. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the department;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the department closed the file without taking action other than to investigate the complaint.

(c) The department shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the department's policies and procedures relating to complaint investigation and resolution.

(d) The department, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

(e) The commission may adopt rules to define the types of complaints to which this section applies.

SECTION 15. Subchapter B, Chapter 11, Parks and Wildlife Code, is amended by adding Section 11.0172 to read as follows:

Sec. 11.0172. LIMIT ON CONTRACTS FOR PUBLICATIONS. (a) In this section:

(1) "Publication" includes the publication of a book, magazine, photograph, poster, or bulletin.

(2) "Youth" means an individual younger than 17 years of age.

(b) The department may not contract with a person regarding a publication unless the contract provides the department the authority to:

(1) terminate the contract for a violation of a rule adopted under Subsection (c);

(2) retain final approval over the content of the publication, including advertising; and

(3) request and receive an appropriate number of copies of the publication that contain advertising that is appropriate for viewing by youth.

(c) The commission shall adopt rules regarding the types of advertising that are appropriate for viewing by youth.

SECTION 16. Section 11.0181, Parks and Wildlife Code, is amended by adding Subsection (c) to read as follows:

(c) The department shall manage the outreach and education activities performed under this section to ensure that the activities:

(1) are consistent with the department's mission and goals;

(2) do not duplicate other efforts by the department or other entities;

(3) provide a cost-effective method for reaching participants; and

(4) can be effectively measured.

SECTION 17. Subchapter B, Chapter 11, Parks and Wildlife Code, is amended by adding Section 11.0182 to read as follows:

Sec. 11.0182. EMPLOYEE FUND-RAISING. (a) The commission by rule shall adopt policies to govern fund-raising activities by department employees on behalf of the department. The rules must:

(1) designate the types of employees who may solicit donations;

(2) restrict where and how fund-raising may occur; and

(3) establish requirements for reports by employees to the director.

(b) The director shall approve and manage fund-raising activities by department employees on behalf of the department in accordance with commission rules.

SECTION 18. Section 11.021, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.021. INFORMATION CONCERNING QUALIFICATIONS AND RESPONSIBILITIES. The director or the director's [his] designee shall provide to commission members and department employees, as often as [is] necessary, information regarding the requirements for office or employment [their qualifications]

under this chapter, including information regarding a person's ~~[code and their]~~ responsibilities under applicable laws relating to standards of conduct for state officers or employees.

SECTION 19. Section 11.022, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.022. EQUAL OPPORTUNITY EMPLOYMENT. (a) The director or the director's [his] designee shall prepare and maintain a written policy statement that implements [to assure implementation of] a program of equal employment opportunity to ensure that [whereby] all personnel decisions [transactions] are made without regard to race, color, disability [handicap], sex, religion, age, or national origin.

(b) The policy statement must [shall] include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, [appointment,] training, and promotion of personnel, that show the intent of the department to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the department's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law[;

~~[(2) a comprehensive analysis of the department's work force that meets federal or state guidelines;~~

~~[(3) procedures by which a determination can be made of significant underutilization in the department work force of all persons of which federal or state guidelines encourage a more equitable balance; and~~

~~[(4) reasonable methods to appropriately address areas of significant underutilization in the department work force of all persons of which federal or state guidelines encourage a more equitable balance].~~

(c) ~~[(b)]~~ The policy statement must [statements shall] be:

(1) updated annually;

(2) reviewed by the state Commission on Human Rights for compliance with Subsection (b); and

~~(3) filed with the governor's office [not later than November 1 of each year, cover an annual period, and be updated at least annually. The governor's office shall develop a biennial report to the legislature based on the information submitted. The report may be made separately or as a part of other biennial reports made to the legislature].~~

SECTION 20. Subchapter B, Chapter 11, Parks and Wildlife Code, is amended by adding Section 11.0255 to read as follows:

Sec. 11.0255. EVALUATION OF CONSTRUCTION PROJECTS. (a) The department shall calculate the costs of each department construction project as the project is completed.

(b) In calculating the costs under Subsection (a), the department:

(1) shall consider both direct and indirect costs of department employees who perform project tasks; and

(2) may use the cost accounting procedures and instructions developed by the State Council on Competitive Government under Section 2162.102, Government Code.

(c) On request, the State Council on Competitive Government shall provide technical assistance to the department, including assistance with the application of the council's cost accounting procedures and instructions.

(d) Using the costs calculated under this section for completed projects, the department shall evaluate the costs and benefits of contracting with private entities or individuals to manage proposed construction-related tasks or projects.

SECTION 21. Section 11.026, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.026. GIFTS OF PROPERTY OR MONEY. (a) Except as provided by Subsection (b), the [The] department may accept gifts of property or money in support of any department purpose authorized in this code.

(b) The department may not accept a gift or other donation from a person who holds a commercial license issued by the department. For the purposes of this section, a license issued under Subchapter D, Chapter 43, is not a commercial license.

SECTION 22. Section 11.0261, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0261. PROHIBITION AGAINST ACCEPTANCE OF GIFTS, GRATUITIES, AND OTHER THINGS OF VALUE; EXCEPTION. (a) Except as provided by Subsection (b), a [A] person who is a member of the commission or an employee of the department may not accept a gift, gratuity, or other thing of value, including travel, from a person who:

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

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that receives funds from the department;

(3) is a person a significant portion of whose business consists of furnishing goods or services to an entity or organization described by Subdivision (1) or (2); or

(4) is an agent, representative, attorney, employee, officer, owner, director, or partner of an entity, organization, or person described by Subdivision (1), (2), or (3).

(b) A department employee may accept reimbursement for travel expenses from the official nonprofit partner designated by the commission under Section 11.205 if:

(1) the employee has sufficiently documented the expense; and

(2) the expense arose out of the performance of an activity related to an employee's official duties regarding the partner.

SECTION 23. Section 11.082, Parks and Wildlife Code, is amended by adding Subsection (d) to read as follows:

(d) In administering the state plan, the department shall consult with, advise, provide resources to, and otherwise assist local governments regarding aquatic vegetation management and control. In this subsection, "local government" includes any political subdivision with jurisdiction over a public body of surface water.

SECTION 24. Chapter 11, Parks and Wildlife Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. LAND AND WATER
RESOURCES CONSERVATION PLAN

Sec. 11.101. DEFINITION. In this subchapter, "conservation" includes the conservation of historical, natural, recreational, and wildlife resources.

Sec. 11.102. PLAN APPROVAL; HEARING REQUIRED. (a) The department must obtain approval from the commission for each development plan required by statute for a geographical area managed by the department.

(b) The commission shall hold a hearing on approval of the plan.

Sec. 11.103. INVENTORY. (a) The department shall inventory all land and water associated with historical, natural, recreational, and wildlife resources in this state that are owned by:

(1) governmental entities; or

(2) nonprofit entities that offer access to the land or water to the public.

(b) The department shall use existing inventory information concerning the lands identified in Subsection (a)(1) whenever possible.

(c) The department shall create a permanent database of the resources inventoried under Subsection (a). At least once every 10 years, the department shall update the database as necessary to reflect changes in the resources.

Sec. 11.104. LAND AND WATER RESOURCES CONSERVATION AND RECREATION PLAN. (a) Using the inventory prepared under Section 11.103, the department shall:

(1) analyze the state's existing and future land and water conservation and recreation needs;

(2) identify threatened land and water resources in this state; and

(3) establish the relative importance for conservation purposes of particular resources listed in the inventory.

(b) Inclusion of specific parcels of land in the inventory shall not constitute any additional right of public access.

(c) Based on the analysis made under Subsection (a), the department shall prepare a land and water resources conservation and recreation plan. The plan must include criteria for determining how to meet the state's conservation and recreation needs. The department shall revise the plan as necessary to reflect changes in the inventory developed under Section 11.103.

(d) The department shall modify any existing plans regarding parks and wildlife management areas to make the existing plans consistent with the land and water resources conservation and recreation plan developed under this section.

(e) The department shall base its decisions regarding the state's conservation needs on the criteria developed in the plan, including decisions relating to:

(1) the acquisition of new resources for the conservation and recreation purposes of the department;

(2) the divestiture of existing department-owned resources;

(3) department grants to local parks;

(4) department cooperation with private conservation organizations and landowners, including associations of landowners; and

(5) other major land conservation operations of the department.

Sec. 11.105. COORDINATION OF CONSERVATION AND RECREATION OPERATIONS. The department shall:

(1) consider all resources listed in the inventory prepared under Section 11.103 in conjunction with each other;

(2) coordinate department activities related to those resources internally and with similar activities of other governmental or nonprofit entities; and

(3) set priorities for department activities related to those resources according to the most vital existing and future needs for conservation and recreation.

Sec. 11.106. EXEMPTIONS. Sections 11.104 and 11.105 do not apply to:

(1) property that is part of a fund created or specifically authorized by the constitution of this state that is administered by or with the assistance of the School Land Board or the General Land Office; or

(2) land, water, or property owned by the permanent university fund or any other land, water, or property owned by, administered by, or held for the use and benefit of an institution of higher education, as that term is defined in Section 61.003, Education Code.

SECTION 25. Chapter 11, Parks and Wildlife Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. STATEWIDE COMMERCIAL PROJECTS

Sec. 11.151. DEFINITION. In this subchapter, "statewide commercial project" means a commercial venture undertaken by the department throughout the state, including promotions, sales, or other activities to raise money for the department. The term does not include a promotion or sale undertaken solely at one site.

Sec. 11.152. BUSINESS PLANS. Each business plan developed under this subchapter must include:

(1) a description of the product or service provided;

(2) an analysis of the information necessary for persons to make decisions on the project;

(3) an analysis of the personnel necessary to manage and implement the project;

(4) financial data, including both past performance and a budget and goals for future performance; and

(5) a list of the resources necessary for a successful project.

Sec. 11.153. DEPARTMENT PLAN: OPERATIONAL STRATEGIES. (a) The department shall develop an agency-wide business plan to guide its overall operational strategies for statewide commercial projects. The plan must:

(1) use the plans prepared under Section 11.154 for each project;

(2) evaluate the efficiency of existing projects;

(3) consider or propose changes to any project necessary to meet the department's overall goals;

(4) compare each project's services and products to similar services and products available from the private sector;

(5) seek to increase savings and improve customer service on each project;

(6) coordinate existing projects to avoid duplication and focus resources on the most efficient and effective projects; and

(7) assess the potential for contracting with a private entity or individual to perform department functions relating to specific projects.

(b) The department shall use the services of the State Council on Competitive Government, where appropriate, in fulfilling the department's duties under Subsection (a)(7).

Sec. 11.154. INDIVIDUAL PROJECT PLANS. (a) The department shall develop a business plan for each statewide commercial project. The plan must contain:

(1) an accurate accounting for all project costs, including personnel and overhead costs; and

(2) reasonable projections of project income.

(b) The director shall review the plan for each project at least annually to assess the overall performance and value of the project.

(c) The department may modify a plan as necessary to meet changing conditions.

Sec. 11.155. ADJUSTMENT OR TERMINATION OF PROJECT FOR FAILURE TO MEET FINANCIAL OBJECTIVES. (a) Except as provided by Subsection (b), the department shall adjust or terminate a statewide commercial project that fails to meet the financial objectives stated in the project's plan.

(b) This section does not apply if the department determines that the project possesses a positive public relations value or fulfills a useful educational purpose.

Sec. 11.156. CONTRACT WITH PRIVATE SECTOR. The department shall consider contracting out all or part of a statewide commercial project to a private entity or individual, including a nonprofit entity or individual.

SECTION 26. Chapter 11, Parks and Wildlife Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. NONPROFIT PARTNERSHIPS

Sec. 11.201. DEFINITIONS. In this subchapter:

(1) "Nonprofit partner" means a nonpolitical legal entity that:

(A) is incorporated under the laws of this state;

(B) has been granted an exemption from federal income tax under Section 501(c), Internal Revenue Code of 1986, as amended;

(C) works with the department to further department goals; and

(D) is selected as provided under Section 11.202.

(2) "Official nonprofit partner" means the nonprofit partner designated by the commission under Section 11.205.

Sec. 11.202. GENERAL DUTIES. (a) The department may select and cooperate with nonprofit partners to serve department goals.

(b) The department must obtain commission approval for each nonprofit partner selected under Subsection (a).

(c) The commission by rule shall establish best practices for nonprofit partners to comply with.

Sec. 11.203. ACCOUNTABILITY OF NONPROFIT PARTNERS; INVESTMENT RESTRICTIONS. (a) The commission by rule shall require a nonprofit partner to comply with specified state standards and safeguards for accounting for state assets held by the nonprofit partner.

(b) Chapter 2256, Government Code, applies to a nonprofit partner to the extent that the partner controls state money.

Sec. 11.204. PLAN. The department shall provide to each nonprofit partner a copy of the plan developed under Section 11.104.

Sec. 11.205. OFFICIAL NONPROFIT PARTNER. (a) The commission shall designate a single nonprofit partner as the official nonprofit partner of the department, unless the commission determines in writing that no nonprofit partner is capable of effectively implementing the goals of this section.

(b) The official nonprofit partner must be dedicated to meeting department goals.

(c) The official nonprofit partner may accept gifts, grants, and donations to further department goals, including a gift, grant, or donation made in the name of the department.

(d) The official nonprofit partner may use state money to acquire property or engage in construction activities only if that acquisition or construction is consistent with the department's conservation and recreation priorities outlined in the plan developed under Section 11.104.

(e) The official nonprofit partner may organize and manage accounts for local nonprofit partners or other organizations to benefit a specific state park or other sites under the department's jurisdiction.

(f) The commission by rule shall establish:

(1) guidelines under which the official nonprofit partner may solicit and accept sponsorships from private entities; and

(2) best practices under which the partner may engage in activities under this section.

Sec. 11.206. AUDIT OF OFFICIAL NONPROFIT PARTNER. (a) The official nonprofit partner shall be audited annually by an independent auditor. The partner shall file the audit with the commission.

(b) The official nonprofit partner's financial transactions involving and financial records relating to state money held by the nonprofit partner are subject to audit by the state auditor as provided in Section 321.013, Government Code.

Sec. 11.207. EMPLOYEE BENEFITS. A nonprofit partner may provide money to the department for the department to award, at the department's discretion, to a department employee as a salary supplement, bonus, award, or other benefit, including a scholarship.

Sec. 11.208. EXPENDITURES; LIMITS. (a) The department shall direct, by the terms of the contract or grant, how a nonprofit partner may spend any state money it receives.

(b) A state employee may not directly spend or obligate a nonprofit partner's money.

(c) A nonprofit partner may not spend state money to:

(1) lobby or otherwise attempt to influence a member of the legislature; or

(2) directly or indirectly attempt to influence legislation.

SECTION 27. Section 12.025, Parks and Wildlife Code, is amended to read as follows:

Sec. 12.025. TECHNICAL GUIDANCE TO LANDOWNERS. (a) The department may provide technical guidance to landowners who request information concerning fish, wildlife, nongame, and habitat management.

(b) In setting priorities for the provision of money to a landowner under this section, the department shall consider:

(1) the inventory developed under Section 11.103; and

(2) the priorities set under Section 11.105.

(c) The department shall support landowner education programs and cooperate with appropriate state agencies.

(d) [(e)] The department shall provide notice of Section 12.0251 to a private landowner who requests technical assistance before entering the property to collect and record information about animal or plant life.

(e) ~~(d)~~ The commission by rule shall adopt policies, including written guidelines for a method for providing notice under Subsection (d) ~~(e)~~ and for departmental entry onto privately owned land to collect information described by Section 12.0251(a). The policies and guidelines must identify the maximum information that the department may maintain under Section 12.0251.

(f) ~~(e)~~ A review or update of a record or plan produced by the department under Section 12.0251 and maintained by the landowner or the landowner's agent may be requested by the landowner or the department.

SECTION 28. Subsections (a), (b), and (c), Section 13.001, Parks and Wildlife Code, are amended to read as follows:

(a) Except as otherwise provided by law, the following are under the department's control and custody:

(1) all recreational and[:;] natural~~[-and historical]~~ areas designated as state parks; and

(2) all historical sites acquired by ~~[are under the control and custody of]~~ the department.

(b) The commission shall establish a classification system for state parks and wildlife management areas that categorizes wildlife management areas, parks, or a portion of parks as wildlife management areas, recreational areas, natural areas, or historical sites ~~[areas]~~. The commission may not classify a historical site as a historical park.

(c) The commission shall adopt rules governing the acquisition and development of recreational areas, natural areas, or historical sites ~~[areas]~~.

SECTION 29. Section 13.002, Parks and Wildlife Code, is amended to read as follows:

Sec. 13.002. DEVELOPMENT AND ACQUISITION OF OUTDOOR AREAS ~~[COMPREHENSIVE STATE PLAN]~~. The department may:

(1) ~~[prepare, maintain, and revise a statewide comprehensive plan for the development of the outdoor recreation resources of this state;~~

~~(2)]~~ develop, operate, and maintain outdoor areas and facilities of the state; and

~~(2) (3)]~~ acquire land, water, and interests in land and water for outdoor recreation areas and facilities.

SECTION 30. Section 13.005, Parks and Wildlife Code, is amended to read as follows:

Sec. 13.005. ACQUISITION OF HISTORICAL SITES ~~[AREAS]~~. (a) The department may acquire by purchase, gift, or other manner historical sites ~~[areas]~~:

(1) where events occurred that represent an important aspect of the cultural, political, economic, military, or social history of the nation or state;

(2) significantly associated with the lives of outstanding historic persons or with an important event that represents a great ideal or idea;

(3) embodying the distinguishing characteristics of an architectural type which is inherently valuable for study of a period, style, or method of construction;

(4) that contributes significantly to the understanding of aboriginal man in the nation or state; or

(5) that is of significant geologic interest relating to prehistoric animal or plant life.

(b) The department shall restore and maintain each historical site [~~area~~] acquired under this section for the benefit of the general public. The department may enter into interagency contracts for this purpose.

(c) The department shall formulate plans [~~In formulating a plan~~] for the preservation and development of [~~a~~] historical sites. Before formulating a plan for a specific site, the department shall conduct an archeological survey of the site. In formulating plans [~~area~~], the department shall:

(1) consider the results from the archeological survey for the site if the plan is for a specific site;

(2) consider the resources necessary to manage a site; and

(3) meet with and [~~may~~] consider comments [~~on the plan~~] made by the Texas Historical Commission.

(d) The department and the Texas Historical Commission shall form a joint panel to establish criteria for determining whether a site is of statewide significance under Subsection (a) and to promote the continuity of a historic sites program.

SECTION 31. Subchapter A, Chapter 13, Parks and Wildlife Code, is amended by adding Sections 13.0051, 13.0052, and 13.0053 to read as follows:

Sec. 13.0051. COORDINATION WITH TEXAS HISTORICAL COMMISSION; REPORT ON PRESERVATION PLANS. The department shall meet regularly with the Texas Historical Commission regarding plans to preserve and develop historical sites in this state.

Sec. 13.0052. REPORTS. The department shall periodically prepare reports on plans to preserve and develop historical sites in this state.

Sec. 13.0053. REFERENCE TO HISTORICAL SITES. (a) In this section, "publication" includes the publication of a book, magazine, photograph, poster, or bulletin.

(b) The department may not refer to a historical site as a "historical park":

(1) in a department publication; or

(2) on a department marker or sign.

SECTION 32. Section 13.010, Parks and Wildlife Code, is amended to read as follows:

Sec. 13.010. HISTORIC SITES [~~LOCATIONS~~]. The department may locate, designate, and suitably mark historic grounds, battlefields, and other historic spots in Texas as historic sites. Fitting markers may be erected; however, no expense may be incurred in the name of the state for this project.

SECTION 33. Section 76.007, Parks and Wildlife Code, is amended to read as follows:

Sec. 76.007. MAXIMUM ACREAGE UNDER LOCATION. (a) The department may not issue a certificate of location for a location that includes more than 100 acres of land covered by water.

(b) A [~~No~~] person may not own, lease, or control more than 300 [~~100~~] acres of land covered by water under certificates of location. A person who does not own, lease, or control more than 300 acres of land may act as an agent for persons who, in the aggregate, own, lease, or control more than 300 acres of land.

SECTION 34. Section 76.017, Parks and Wildlife Code, is amended to read as follows:

Sec. 76.017. LOCATION RENTAL FEES. (a) ~~The [No rental fee is owed on any location when oysters are not sold or marketed from the location for a period of five years after the date of the establishment of the location:~~

~~[(b) When oysters are sold or marketed from the location and thereafter, the] holder of a [the] certificate of location shall pay to the department \$6 [\$3] per acre of location per year to rent the location under the certificate. In lieu of that payment, the commission may set the required payment under this section in a greater amount.~~

~~(b) [(c)] Rental fees are due annually by March 1.~~

~~(c) The holder of a certificate shall pay the department a late penalty fee equal to 10 percent of the amount due for any rental, transfer, sale, or renewal fee that is not paid when due.~~

~~(d) The failure to pay any rental, transfer, sale, renewal, or late penalty fee within 90 days of the due date [when due] terminates the lease.~~

SECTION 35. Subchapter A, Chapter 76, Parks and Wildlife Code, is amended by adding Sections 76.018 and 76.019 to read as follows:

Sec. 76.018. LOCATION RENTAL TERM; RENEWAL; AUCTION. (a) The term of a rental lease for a location under this subchapter is 15 years.

(b) The commission shall determine renewal procedures to follow at the end of each lease term. The procedures must include:

(1) a determination that the lease renewal will be based on the need for depuration of polluted oysters and other considerations specified in the oyster management plan;

(2) payment of a \$200 fee due on renewal of the lease;

(3) a condition that the current leaseholder will be offered a first right of refusal if the lease is renewed under this chapter; and

(4) any other conditions for the lease renewal that do not conflict with this chapter.

(c) The commission shall determine auction procedures for the issuance of a lease that is not renewed by the previous leaseholder under Subsection (b).

Sec. 76.019. PROCEDURES FOR SALE OR TRANSFER OF LOCATION RENTAL. The commission shall determine procedures for reissuance of a lease when the lease is sold or otherwise transferred. The procedures must include:

(1) payment of a \$200 fee due on the sale or transfer of the lease unless the lease is inherited; and

(2) a provision that the sale or transfer does not change the lease term.

SECTION 36. Section 76.036(a), Parks and Wildlife Code, is amended to read as follows:

(a) The holder of a permit shall clearly and distinctly mark[;] by buoys[~~-, stakes, or fences,~~] the boundaries of the areas designated in the permit from which he may take or in which he may deposit oysters.

SECTION 37. Subchapter A, Chapter 77, Parks and Wildlife Code, is amended by adding Section 77.005 to read as follows:

Sec. 77.005. STUDY AND REPORT ON SHRIMP INDUSTRY AND RESOURCES. (a) Using the shrimp management plan required by Section 77.007 and the research conducted under Section 77.004, the department shall comprehensively study shrimp resources, including the shrimp population, and the shrimp industry. The study shall analyze:

(1) the status of the shrimp population in coastal water, including the size and projected growth of shrimping beds;

(2) the economic health of the shrimp industry;

(3) the status of conservation measures, including department regulations and license buybacks; and

(4) the status of marine resources and habitats affected by shrimping.

(b) In conducting the study, the department shall solicit and consider input from:

(1) the public;

(2) the shrimp industry;

(3) other businesses affected by the shrimp industry; and

(4) other persons interested in marine resources.

(c) The department shall report on the status of the study to:

(1) the commission;

(2) the presiding officer of each house of the legislature; and

(3) the committees of each house of the legislature that have primary oversight jurisdiction over the department.

(d) The department may repeat the study and report as necessary to adequately regulate the shrimp industry and to preserve shrimp resources.

(e) The commission shall base policies and rules relating to shrimping on the results of the most recent study completed under this section.

SECTION 38. Subdivision (4), Section 11.001, Parks and Wildlife Code, is amended to read as follows:

(4) "Presiding officer" [~~"Chairman"~~] means the presiding officer [~~chairman~~] of the Parks and Wildlife Commission.

SECTION 39. Section 11.0162, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0162. ADVISORY COMMITTEES TO COMMISSION. (a) The presiding officer [~~chairman~~] may appoint committees to advise the commission on issues under its jurisdiction.

(b) The presiding officer [~~chairman~~] may adopt rules that set the membership, terms of service, qualifications, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this section.

SECTION 40. Subsection (b), Section 21.013, Parks and Wildlife Code, is amended to read as follows:

(b) The bonds shall be signed by the presiding officer [~~chairman~~] and the director, and the seal of the department shall be impressed on them.

SECTION 41. Section 21.014, Parks and Wildlife Code, is amended to read as follows:

Sec. 21.014. FACSIMILE SIGNATURES AND SEALS. In the resolution authorizing the issuance of an installment or series of bonds, the commission may prescribe the extent to which facsimile signatures and facsimile seals instead of manual signatures and manually impressed seals may be used in executing the bonds and appurtenant coupons. Interest coupons may be signed by the facsimile signatures of the presiding officer [~~chairman~~] and the director.

SECTION 42. Subsection (b), Section 22.055, Parks and Wildlife Code, is amended to read as follows:

(b) The presiding officer [~~chairman of the commission~~], on behalf of the department, may execute and deliver the necessary instruments to convey the iron ore in place to the purchasers.

SECTION 43. Subsection (a), Section 81.206, Parks and Wildlife Code, is amended to read as follows:

(a) Sanctuaries shall be set aside and designated by proclamation of the commission signed by the presiding officer [~~chairman~~].

SECTION 44. Section 76.016, Parks and Wildlife Code, is repealed.

SECTION 45. (a) The Parks and Wildlife Department shall study all outreach and education activities performed under Section 11.0181, Parks and Wildlife Code, to determine whether the activities comply with Subsection (c), Section 11.0181, Parks and Wildlife Code, as added by this Act.

(b) Not later than September 1, 2002, the Parks and Wildlife Department shall report to the following entities on the study's results:

- (1) the Parks and Wildlife Commission;
- (2) the House Appropriations Committee;
- (3) the House State Recreational Resources Committee;
- (4) the Senate Finance Committee; and
- (5) the Senate Natural Resources Committee.

(c) Until the report is submitted under Subsection (b) of this section, the Parks and Wildlife Commission shall limit spending on outreach and education activities performed under Section 11.0181, Parks and Wildlife Code, unless the Parks and Wildlife Department can prove to the Parks and Wildlife Commission that the spending is for an activity that:

- (1) is effective; or
- (2) is required by statute.

SECTION 46. (a) The Parks and Wildlife Department may not acquire a new park, historical site, or wildlife site before:

- (1) the Parks and Wildlife Department has completed the inventory required by Section 11.103, Parks and Wildlife Code, as added by this Act; and
- (2) the Parks and Wildlife Commission has approved, under Section 11.102, Parks and Wildlife Code, as added by this Act, the plan prepared by the department under Section 11.104, Parks and Wildlife Code, as added by this Act.

(b) This section does not apply to acquisitions, as determined by the Parks and Wildlife Department, that:

- (1) began before the effective date of this Act;
- (2) are within or adjacent to existing Parks and Wildlife Department land and increase public access to those facilities; or
- (3) are of statewide significance.

SECTION 47. (a) In this section, "publication" and "youth" have the meanings assigned by Section 11.0172, Parks and Wildlife Code, as added by this Act.

(b) To the extent a contract for a publication does not expressly allow the Parks and Wildlife Department to terminate the contract for a violation of a rule adopted under Section 11.0172(c), Parks and Wildlife Code, as added by this Act, retain final approval over the content of the publication, including advertising, or request and receive an appropriate number of copies of the publication that contain advertising that is appropriate for viewing by youth, not later than March 1, 2002, the department shall negotiate a modification to or otherwise modify the contract to contain provisions allowing for:

- (1) termination of the contract for a violation of a rule adopted under Section 11.0172(c), Parks and Wildlife Code, as added by this Act;

(2) final approval over the content of the publication, including advertising; and

(3) requesting and receiving an appropriate number of copies of the publication that contain advertising that is appropriate for viewing by youth.

SECTION 48. Not later than September 1, 2002, the Parks and Wildlife Department shall complete the initial report required under Subsection (c), Section 77.005, Parks and Wildlife Code, as added by this Act.

SECTION 49. Not later than October 15, 2002, the Parks and Wildlife Department shall prepare the plan required under Section 11.104, Parks and Wildlife Code, as added by this Act.

SECTION 50. The changes in law made by this Act in the qualifications of, and the prohibitions applying to, the members of the Parks and Wildlife Commission do not affect the entitlement of a person serving as a member of the commission immediately before September 1, 2001, to continue to carry out the functions of the person's office for the remainder of the person's term. The changes in law apply only to a person appointed on or after September 1, 2001. This Act does not prohibit a person who is a member of the Parks and Wildlife Commission immediately before September 1, 2001, from being reappointed as a commission member if the person has the qualifications required for the position under Chapter 11, Parks and Wildlife Code, as amended by this Act.

SECTION 51. This Act takes effect September 1, 2001.

Floor Amendment No. 3

Amend **CSSB 305** (House committee printing) after Section 17 of the bill (page 11, between lines 25 and 26), by inserting the following:

(c) At least once each biennium, the state auditor shall audit the fund-raising activities performed under this section. The audit shall disclose who has raised money for the department and the amount of money each person has raised. The state auditor shall annually report the results of the audit to the presiding officer of each house of the legislature and of each committee having primary jurisdiction over the department. Each member of the legislature may access the report.

Floor Amendment No. 4

Amend **CSSB 305**, in SECTION 17 of the bill, added Section 11.0182, Parks and Wildlife Code, on page 11, between lines 25 and 26, House Committee Printing, by adding Subsection (c) to read as follows:

(c) Policies adopted by the commission under Subsection (a) are public information and available to the public under Chapter 552, Government Code.

Floor Amendment No. 7

Amend **CSSB 305** (House committee printing) by striking Section 22 of the bill (page 14, line 24 through page 15, line 24) and renumbering the remaining sections of the bill appropriately.

Floor Amendment No. 10

Amend **CSSB 305** (House committee printing) in Section 26 of the bill, by striking proposed Section 11.206(b), Parks and Wildlife Code (page 23, lines 24-27), and substituting the following:

(b) At least once each biennium, the state auditor shall audit, as provided by Section 321.013, Government Code, each nonprofit partner's financial transactions involving, and financial records relating to, state and private money held by the nonprofit partner including expenditures. The state auditor shall annually report the results of the audit to the presiding officer of each house of the legislature and of each committee having primary jurisdiction over the department. Each member of the legislature may access the report.

Amendment No. 11

Amend **CSSB 305** by striking lines 1-5 on page 24. (proposed Sec. 11.207, Parks and Wildlife Code).

Floor Amendment No. 12

Amend **CSSB 305** (House committee report) following SECTION 27 of the bill (page 25, between lines 14 and 15) by adding a new SECTION 28 to read as follows and renumbering existing SECTION 28 and subsequent SECTIONS of the bill appropriately:

SECTION 28. Section 12.0251(a), Parks and Wildlife Code, is amended to read as follows:

(a) Except as provided by this section, information is not subject to Chapter 552, Government Code, and may not be disclosed to any person or group, including a state or federal agency, if the information is collected by the department in response to a landowner request relating to the specific location, species identification, or quantity of any animal or plant life that is:

- (1) protected by this code; and
- (2) located on private land that:

(A) is subject to a wildlife management plan developed cooperatively with the department for private land; or

(B) is the subject of a recommendation report prepared by the department for the landowner.

Floor Amendment No. 13

Amend **CSSB 305** by adding a new section as follows:

Section 12.703, Parks and Wildlife Code, is amended to read as follows:

Section 12.703. Point-of-Sale System

(a) The department may issue a license, stamp, tag, permit, or another similar item authorized by this code through the use of automated equipment and a point-of-sale system.

(b) The department may designate an entity to install the system for the issuance of licenses, stamps, permits, tags, or other similar items. A designated entity may collect revenue for the department from license deputies.

(c) The commission by rule may set the amount of compensation for a point-of-sale entity. The compensation may include an amount to be retained by the entity from the fee collected for each item issued by the entity. The rules must specify standards for the licenses, including the legibility of the license.

Floor Amendment No. 14

Amend **CSSB 305** (house committee printing) as follows:

(1) Insert the following new SECTION, appropriately numbered, and renumber subsequent SECTIONS of the bill accordingly:

SECTION _____. (a) Subchapter A, Chapter 13, Parks and Wildlife Code, is amended by adding Section 13.0041 to read as follows:

Sec. 13.0041. USE OF CERTAIN BOND REVENUE. The department shall, if practicable, apportion at least fifteen percent of any money received by the department from the proceeds of the sale of bonds issued under Section 50-f, Article III, Texas Constitution, to specific park maintenance or improvement projects for which matching private or local money for the specific state park and wildlife projects has been made available to the department.

(b) This section takes effect only if the constitutional amendment proposed by **HJR 97**, 77th Legislature, Regular Session, 2001, is approved by the voters. If the proposed constitutional amendment is not approved by the voters, this section has no effect.

(2) In SECTION 51 of the bill (page 36, line 22), strike "This" and substitute "Except as otherwise provided by this Act, this".

Floor Amendment No. 15

Amend **CSSB 305** (House committee report) by adding the following appropriately numbered Section to the bill and renumbering the remaining Sections of the bill appropriately:

SECTION _____. Subchapter D, Chapter 61, Parks and Wildlife Code, is amended by adding Section 61.105 to read as follows:

Sec. 61.105. TIMING OF PUBLIC HEARINGS THAT AFFECT COMMERCIAL SHRIMPING. (a) In this section, "commercial shrimping activity" means an activity for which a license is required under Chapter 77.

(b) The commission may not hold a public hearing on a matter that affects a commercial shrimping activity during the 60-day period in which that activity is most active.

Floor Amendment No. 16

Amend **CSSB 305** (House committee report) as follows:

(1) In Section 37 of the bill, in added Section 77.005(b), Parks and Wildlife Code (page 31, line 25), strike "and".

(2) In Section 37 of the bill, in added Section 77.005(b), Parks and Wildlife Code (page 31, line 26), after "resources" and before the period, insert: ;

(5) the comptroller regarding economic data; and

(6) independent research organizations regarding biological data

Floor Amendment No. 17

Amend **CSSB 305** by adding appropriately numbered SECTIONS to the bill to read as follows and renumbering the remaining SECTIONS of the bill appropriately:

SECTION _____. Section 43.151, Parks and Wildlife Code, is amended to read as follows:

Sec. 43.151. THREATS TO PUBLIC SAFETY OR DAMAGE BY WILDLIFE. (a) A person who has evidence clearly showing that wildlife protected by this code is causing serious damage to agricultural, horticultural, or aquicultural interests or other property, or is a threat to public safety, and who desires to kill the protected wildlife shall give written notice of the facts to the county judge of the county or to the mayor of the municipality in which the damage or threat occurs.

(b) The county judge or mayor, on receiving the notice, shall immediately cause a substantial copy of the notice to be posted in the county courthouse or city hall, as applicable, and shall notify the department of the location of the property where the damage or threat is occurring, the type of damage or nature of the threat, and the name of the applicant.

SECTION _____. Section 43.152, Parks and Wildlife Code, is amended to read as follows:

Sec. 43.152. DEPARTMENT INSPECTION. On receiving notice from a county judge or mayor, the department shall inspect the property and determine if damage or a threat to public safety is occurring as alleged in the notice. If the damage or threat is occurring, the department shall make recommendations to the person as are feasible and appropriate for controlling the damage or threat.

SECTION _____. Section 43.154(b), Parks and Wildlife Code, is amended to read as follows:

(b) The department shall deliver the permit, if issued, to the county judge or mayor that sent the notice of damage or threat. The permit may not be delivered earlier than 24 hours after the notice from the county judge or mayor was received by the department.

Floor Amendment No. 18

Amend **CSSB 305** by adding the following appropriately numbered SECTION to the bill and renumbering the remaining SECTIONS of the bill appropriately:

SECTION _____. Subchapter A, Chapter 89, Parks and Wildlife Code, is amended by adding Section 89.005 to read as follows:

Sec. 89.005. USE OF BRIDGES, TUNNELS, AND CAUSEWAYS. (a) The department, in cooperation with the Texas Department of Transportation and local governments, may use obsolete bridges, tunnels, and causeways to create artificial reefs under this chapter.

(b) The department may receive from the Texas Department of Transportation the transfer of obsolete bridges, tunnels, and causeways to create artificial reefs.

(c) The department may provide assistance, including money, to a local government to fulfill the purposes of this section.

(d) Any money appropriated to the department for the artificial reef program under this chapter may be used for the purposes of this section.

Floor Amendment No. 19

Amend **CSSB 305** (House committee printing) as follows:

- (1) In Section 46(b) of the bill (page 35, line 7), strike "or".
- (2) In Section 46(b) of the bill (page 35, line 8), strike "(3) are of statewide significance" and substitute:
 - (3) are of statewide significance; or
 - (4) are approved by the Parks and Wildlife Commission.

Floor Amendment No. 23

Amend **CSSB 305** by inserting the following appropriately numbered section and by renumbering any remaining sections appropriately.

SECTION _____. Chapter 31, Parks and Wildlife Code, is amended by adding Subsection (f) to Section 31.006 to read as follows:

(f) The commission may adopt rules for the creation of a program for the continuing identification and classification of participants in the vessel and outboard motor industries doing business in this state. The commission may set fees to administer this subsection. Information from the program will be used by the department in the appointment of agents under this section or for any other purpose required by the commission's rules or this chapter.

Floor Amendment No. 24

Amend **CSSB 305** by adding the following appropriately numbered sections and renumbering the sections of the bill accordingly:

SECTION _____. Section 26.129, Water Code, is amended to read as follows:

Sec. 26.129. DUTY OF PARKS AND WILDLIFE DEPARTMENT. The Parks and Wildlife Department and its authorized employees shall enforce the provisions of this chapter to the extent that any violation affects aquatic life and wildlife as provided in Section 7.109 [~~26.124(b) of this code~~].

SECTION _____. Section 7.109(a), Water Code, is amended to read as follows:

(a) If it appears that a violation or a threat of violation of Section 26.121 or 26.050 or a rule, permit, or order of the commission has occurred or is occurring that affects aquatic life or wildlife, the Parks and Wildlife Department, in the same manner as the commission under this chapter, may have a suit instituted in a district court for injunctive relief or civil penalties, or both, as authorized by this subchapter, against the person who committed or is committing or threatening to commit the violation.

SECTION _____. Subchapter B, Chapter 26, Water Code, is amended by adding Section 26.050 to read as follows:

Sec. 26.050. PROHIBITION ON CERTAIN USES OF GASOLINE CONTAINING METHYL TERTIARY BUTYL ETHER. (a) After September 1, 2004, the Parks and Wildlife Department shall ensure that a person may not operate a waterborne craft, including a boat, motorboat, or personal watercraft, with an internal combustion propulsion system using gasoline containing methyl tertiary butyl ether on any surface water body in this state if the gasoline contains methyl tertiary butyl ether in an amount intended to meet the requirements of a reformulated gasoline under Section 211(k) of the federal Clean Air Act (42 U.S.C. Section 7545).

(b) Subsection (a) does not apply to:

(1) the use of a gasoline that contains some amount of methyl tertiary butyl ether but that is a conventional gasoline under Section 211(k) of the federal Clean Air Act (42 U.S.C. Section 7545); or

(2) the use of a gasoline containing methyl tertiary butyl ether in an area designated as a nonattainment area under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407) if the use of reformulated gasoline is required by federal law and that requirement may be met by the use of methyl tertiary butyl ether.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 305** on third reading by adding the following appropriately numbered section to the bill and renumbering the remaining sections of the bill appropriately:

SECTION _____. Section 11.033, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.033. USE OF GAME, FISH, AND WATER SAFETY ACCOUNT. To the extent allowed by federal law, money [~~Money~~] in the game, fish, and water safety account may be used for the following purposes:

(1) enforcement of fish, shrimp, and oyster laws, game laws, and laws pertaining to sand, shell, and gravel;

(2) dissemination of information pertaining to marine life, wild animal life, wildlife values, and wildlife management;

(3) scientific investigation and survey of marine life for the better protection and conservation of marine life;

(4) establishment and maintenance of fish hatcheries, fish sanctuaries, tidal water fish passes, wildlife management areas, and public hunting grounds;

(5) propagation and distribution of marine life, game animals, and wild birds;

(6) protection of wild birds, fish, and game;

(7) purchase, repair, and operation of boats and dredges;

(8) research, management, and protection of the fish and wildlife resources of this state, including alligators and fur-bearing animals;

(9) salaries of employees and other expenses necessary to carry out the duties of the department under laws relating to fish, shrimp, oysters, game, water safety, and sand, shell, and gravel;

(10) expansion and development of additional opportunities of hunting and fishing in state-owned land and water;

(11) removing rough fish from public water;

(12) administration and enforcement of the water safety laws as set out in Chapter 31;

(13) purchasing all necessary forms and supplies, including reimbursement of the department for any material produced by its existing facilities or work performed by other divisions of the department;

(14) purchase, construction, and maintenance of boat ramps on or near public waters as provided in Chapter 31;

(15) resource protection activities; and

(16) any other use provided by law.

(b) The department may use money from license fees paid by hunters and fisherman only for those functions required to manage the fish and wildlife resources of this state.

The amendments were read.

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

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 305** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chair; Brown, Armbrister, Zaffirini, and Haywood.

SENATE BILL 1444 WITH HOUSE AMENDMENTS

Senator Brown called **SB 1444** 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 1444** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the general powers and authority of water districts; providing a penalty.

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

SECTION 1. Section 49.054(d), Water Code, is amended to read as follows:

(d) If the board appoints a director to serve as treasurer, that director is not subject to the investment officer training requirements of Chapter 2256 [~~Section 2256.007~~], Government Code, unless the director is also appointed as the district's investment officer under Chapter 2256, Government Code.

SECTION 2. Section 49.057(a), Water Code, is amended to read as follows:

(a) The board shall be responsible for the management of all the affairs of the district. The district shall employ or contract with all persons, firms, partnerships, corporations, or other entities, public or private, deemed necessary by the board for the conduct of the affairs of the district, including, but not limited to, engineers, attorneys, financial advisors, operators, bookkeepers, tax assessors and collectors, auditors, and administrative staff. The board may appoint an employee of a firm, partnership, corporation, or other entity with which the district has contracted to serve as the investment officer of the district under Chapter 2256 [~~Section 2256.007~~], Government Code.

SECTION 3. Section 49.060(a), Water Code, is amended to read as follows:

(a) A director is entitled to receive fees of office of not more than \$150 [~~\$100~~] a day for each day the director actually spends performing the duties of a director. The fees of office may not exceed \$6,000 per annum except for directors of a special water authority which is engaged in the distribution and sale of electric energy to the public.

SECTION 4. Section 49.102, Water Code, is amended by adding a new Subsection (i) and redesignating existing Subsection (i) as Subsection (j) to read as follows:

(i) A district, at an election required under Subsection (a), may submit to the qualified voters of the district the proposition of whether a plan as authorized by Section 49.351 should be implemented or entered into by the district.

(j) The provisions of this section shall not be applicable to any district exercising the powers of Chapter 375, Local Government Code, or any district created by a special Act of the legislature that does not require a confirmation election.

SECTION 5. Section 49.106, Water Code, is amended by adding Subsection (e) to read as follows:

(e) A district's authorization to issue bonds resulting from an election held under this section, or any other law that allows for the qualified voters of a district to authorize the issuance of bonds by a district, remains in effect after the election unless the district is dissolved or is annexed by another district.

SECTION 6. Section 49.107, Water Code, is amended by adding Subsection (g) to read as follows:

(g) Sections 26.04, 26.05, and 26.07, Tax Code, do not apply to a tax levied and collected under this section or an ad valorem tax levied and collected for the payment of the interest on and principal of bonds issued by a district.

SECTION 7. Section 49.108, Water Code, is amended by amending Subsection (e) and adding Subsection (f) to read as follows:

(e) A district that is required under Section 49.181 to obtain approval by the commission of the district's issuance of bonds must obtain approval by the executive director before the district enters into an obligation under this section to collect tax for debt that exceeds three years. This subsection does not apply to contract taxes that are levied to pay for a district's share of bonds that have been issued by another district and approved by the commission or for bonds issued by a municipality.

(f) Sections 26.04, 26.05, and 26.07, Tax Code, do not apply to a tax levied and collected for payments made under a contract approved in accordance with this section.

SECTION 8. Section 49.151(c), Water Code, is amended to read as follows:

(c) The board may ~~[by resolution]~~ allow disbursements of district money to be transferred by federal reserve wire system. The board by resolution may allow the wire transfers to accounts in the name of the district or accounts not in the name of the district.

SECTION 9. Section 49.155(a), Water Code, is amended to read as follows:

(a) The district may pay out of bond proceeds or other available funds of the district all expenses of the district authorized by this section, including expenses reasonable and necessary to effect the issuance, sale, and delivery of bonds as determined by the board, including, but not limited to, the following:

(1) interest during construction ~~[not to exceed three years after acceptance of the project];~~

(2) capitalized interest not to exceed three years' interest;

(3) reasonable and necessary reserve funds not to exceed two years' interest on the bonds;

(4) interest on funds advanced to the district;

(5) financial advisor, bond counsel, attorney, and other consultant fees;

(6) paying agent, registrar, and escrow agent fees;

(7) right-of-way acquisition;

(8) underwriter's discounts or premiums;

(9) engineering fees, including surveying expenses and plan review fees;

(10) commission and attorney general fees;

(11) printing costs;

(12) all organizational, administrative, and operating costs during creation and construction periods;

(13) the cost of investigation and making plans, including preliminary plans and associated engineering reports;

(14) land required for stormwater control;

(15) costs associated with requirements for federal stormwater permits; and

(16) costs associated with requirements for endangered species permits.

SECTION 10. Section 49.183(b), Water Code, is amended to read as follows:

(b) Except for refunding bonds, or bonds sold to a state or federal agency, ~~after any bonds are finally approved and~~ before any bonds ~~[they]~~ are sold by a district, the board shall publish an appropriate notice of the sale:

(1) at least one time not less than 10 days before the date of sale in a newspaper of general circulation in the county or counties in which the district is located; and

(2) at least one time in one or more recognized financial publications of general circulation in the state as approved by the state attorney general.

SECTION 11. Section 49.184, Water Code, is amended by adding Subsection (f) to read as follows:

(f) In any proceeding concerning the validity of the creation of a district or the annexation of property by a district, a certificate of ownership as certified by the central appraisal district of the county or counties in which the property is located creates a presumption of ownership, and additional proof of ownership is not required unless there is substantial evidence in the official deed records of the county in which the property is located to rebut the presumption. On request by a district, the central appraisal district of the county or counties in which the district is located shall furnish certificates of ownership and may charge reasonable fees to recover the actual costs incurred in preparing the certificates.

SECTION 12. Section 49.212, Water Code, is amended by amending Subsections (a) and (d) and adding Subsection (e) to read as follows:

(a) A district may adopt and enforce all necessary charges, mandatory fees, or rentals, in addition to taxes, for providing or making available any district facility or service, including firefighting activities provided under Section 49.351.

(d) Notwithstanding any provision of law to the contrary, a district that charges a fee that is an impact fee as described in Section 395.001(4), Local Government Code, must comply with Chapter 395, Local Government Code. A charge or fee by a district for construction, installation, or inspection of a tap or connection to district water, sanitary sewer, or drainage facilities, including all necessary service lines and meters, or for wholesale facilities that serve such water, sanitary sewer, or drainage facilities that (i) does not exceed three times the actual and reasonable costs to the district for such tap or connection, ~~(or)~~ (ii) if made to a nontaxable entity for retail or wholesale service, does not exceed the actual costs to the district for such work and for all facilities that are necessary to provide district services to such entity and that are financed or are to be financed in whole or in part by tax-supported or revenue bonds of the district, or (iii) if made by a district for retail or wholesale service on land that at the time of platting was not being provided with water or wastewater service by the district, shall not be deemed to be an impact fee under Chapter 395, Local Government Code. A district may pledge the revenues of the district's utility system to pay the principal of or interest on bonds issued to construct the capital improvements for which a fee was imposed under this subsection, and money received from the fees shall be considered revenues of the district's utility system for purposes of the district's bond covenants.

(e) Chapter 2007, Government Code, does not apply to a tax levied, a standby fee imposed, or a charge, fee, or rental adopted or enforced by a district under this chapter, another chapter of this code, or Chapter 395, Local Government Code.

SECTION 13. Section 49.218, Water Code, is amended by adding a new Subsection (d), relettering existing Subsection (d) as Subsection (f), and adding Subsections (e) and (g) to read as follows:

(d) A district or water supply corporation may require a service applicant, as a condition of service, to grant a permanent recorded easement dedicated to the district or water supply corporation that will provide a reasonable right of access and use to allow the district or water supply corporation to construct, install, maintain, replace, upgrade, inspect, and test any facilities necessary to serve that applicant as well as the district's or water supply corporation's purposes in providing systemwide service. A district or water supply corporation may not require an applicant to provide an easement for a service line for the sole benefit of another applicant.

(e) As a condition of service to a new subdivision, a district or water supply corporation may require a developer to provide permanent recorded easements to and throughout the subdivision sufficient to construct, install, maintain, replace, upgrade, inspect, and test any facilities necessary to serve the subdivision's anticipated service demands on full occupancy.

(f) A district or water supply corporation may also lease property from others for its use on such terms and conditions as the board of the district or the board of directors of the water supply corporation may determine to be advantageous.

(g) Property acquired under this section, or any other law allowing the acquisition of property by a district or water supply corporation, and owned by a district or water supply corporation is not subject to assessments, charges, fees, or dues imposed by a nonprofit corporation under Chapter 204, Property Code.

SECTION 14. Section 49.226, Water Code, is amended to read as follows:

Sec. 49.226. SALE OR EXCHANGE OF REAL [~~SURPLUS LAND~~] OR PERSONAL PROPERTY. (a) Any personal property valued at more than \$300 or any land or interest in land owned by the district which is found by the board to be surplus and is not needed by the district may be sold under order of the board either by public or private sale, or the land, interest in land, or personal property may be exchanged for other land, interest in land, or personal property needed by the district. Except as provided in Subsection (b), land, interest in land, or personal property must be exchanged for like fair market value, which value may be determined by the district.

(b) Any property dedicated to or acquired by the district without expending district funds may be abandoned or released to the original grantor, the grantor's heirs, assigns, executors, or successors upon terms and conditions deemed necessary or advantageous to the district and without receiving compensation for such abandonment or release. District property may also be abandoned, released, exchanged, or transferred to another district, municipality, county, countywide agency, or authority upon terms and conditions deemed necessary or advantageous to the district. Narrow strips of property resulting from boundary or surveying conflicts or similar causes, or from insubstantial encroachments by abutting property owners, or property of larger configuration that has been subject to encroachments by abutting property owners for more than 25 years may be abandoned, released, exchanged, or transferred to such abutting owners upon terms and conditions deemed necessary or advantageous to the district. Chapter 272, Local Government Code, does [shall] not apply to this section [subsection].

(c) Before either a public or a private sale of real property [~~not required by the district~~], the district shall give notice of the intent to sell by publishing notice once a week for two consecutive weeks in one or more newspapers with general circulation in the district.

(d) If the district has outstanding bonds secured by a pledge of tax revenues, the proceeds of the sale of property [~~not required by the district~~] shall be applied to retire outstanding bonds of the district [~~when required by the district's applicable bond resolutions~~].

(e) If the district does not have any outstanding bonds, the proceeds derived from the sale of real or [the] personal property [~~or land not required by the district~~] may be used for any lawful purpose.

SECTION 15. Subchapter H, Chapter 49, Water Code, is amended by adding Section 49.234 to read as follows:

Sec. 49.234. PROHIBITION OF CERTAIN PRIVATE ON-SITE FACILITIES.

(a) A district or water supply corporation that operates a wastewater collection system to serve land within its boundaries by rule may prohibit the installation of private on-site wastewater holding or treatment facilities on land within the district that is not served by the district's or corporation's wastewater collection system. A district or corporation that has not received funding from Subchapter K, Chapter 17, Water Code, may not require a property owner who has already installed an on-site wastewater holding or treatment facility to connect to the district's or corporation's wastewater collection system.

(b) A district or water supply corporation that prohibits an installation described by Subsection (a) shall agree to pay the owner of a particular tract the costs of connecting the tract to the district's or corporation's wastewater collection system if the distance along a public right-of-way or utility easement from the nearest point of the district's or corporation's wastewater collection system to the boundary line of the tract requiring wastewater collection services is 300 feet or more, subject to commission rules regarding reimbursement of those costs.

SECTION 16. Section 49.271(c), Water Code, is amended to read as follows:

(c) The district may adopt minimum criteria for the qualifications of bidders on its construction contracts and for sureties issuing payment and performance bonds. For construction contracts over \$25,000, the district shall require a person who bids to submit a certified or cashier's check on a responsible bank in the state equal to at least two percent of the total amount of the bid, or a bid bond of at least two percent of the total amount of the bid issued by a surety legally authorized to do business in this state, as a good faith deposit to ensure execution of the contract. If the successful bidder fails or refuses to enter into a proper contract with the district, or fails or refuses to furnish the payment and performance bonds [~~bond~~] required by law, the bidder forfeits the deposit. The payment, performance, and bid bonding requirements of this subsection do not apply to a contract for the purchase of equipment, materials, or machinery not otherwise incorporated into a construction project.

SECTION 17. Sections 49.273(i) and (j), Water Code, are amended to read as follows:

(i) If changes in plans or specifications are necessary after the performance of the contract is begun, or if it is necessary to decrease or increase the quantity of the work to be performed or of the materials, equipment, or supplies to be furnished, the board

may approve change orders making the changes. The aggregate of the change orders may not increase the original contract price by more than 10 percent. Additional change [~~Change~~] orders [~~to contracts~~] may be issued only as a result of unanticipated conditions encountered during construction, repair, or renovation or changes in regulatory criteria or to facilitate project coordination with other political entities.

(j) The board is not required to advertise or seek competitive bids for the repair of district facilities if the scope or extent of the repair work cannot be readily ascertained or if the nature of the repair work does not readily lend itself to competitive bidding [~~by the district's operator if the cost of the repair is less than or equal to the advertising requirements of this section~~].

SECTION 18. Subchapter I, Chapter 49, Water Code, is amended by adding Section 49.279 to read as follows:

Sec. 49.279. PREVAILING WAGE RATES. In addition to the alternative procedures provided by Section 2258.022, Government Code:

(1) a district located wholly or partially within one or more municipalities or within the extraterritorial jurisdiction of one or more municipalities may determine its prevailing wage rate for public works by adopting the prevailing wage rate of:

(A) one of the municipalities; or

(B) the county in which the district is located or, if the county in which the district is located has not adopted a wage rate, the prevailing wage rate of a county adjacent to the county in which the district is located; and

(2) a district not located wholly or partially within the extraterritorial jurisdiction of a municipality may determine the district's prevailing wage rate by adopting the prevailing wage rate of the county in which the district is located or, if the county in which the district is located has not adopted a wage rate, the wage rate of a county adjacent to the county in which the district is located.

SECTION 19. Section 49.302(b), Water Code, is amended to read as follows:

(b) A petition requesting the annexation of a defined area signed by a majority in value of the owners of land in the defined area, as shown by the tax rolls of the central appraisal district of the county or counties in which such area is located, or signed by 50 landowners if the number of landowners is more than 50, shall describe the land by metes and bounds or by lot and block number if there is a recorded plat of the area and shall be filed with the secretary of the board.

SECTION 20. Section 49.304(a), Water Code, is amended to read as follows:

(a) If the board determines that an exclusion hearing should be held as provided by Section 49.303(a) or (c), or if a written petition requesting an exclusion hearing is filed with the secretary of the board as provided by [in] Section 49.303(b) [49.303], the board shall give notice of the time and place of a hearing to announce its own conclusions relating to land or other property to be excluded and to receive petitions for exclusion of land or other property.

SECTION 21. Subchapter J, Chapter 49, Water Code, is amended by adding Section 49.315 to read as follows:

Sec. 49.315. ADDING AND EXCLUDING LAND BEFORE CONFIRMATION. (a) A district may add or exclude land in accordance with this subchapter:

(1) after a district is created by order of the commission or another governmental entity or by special Act of the legislature; and

(2) before a confirmation election is held as required by Section 49.102.

(b) If land is added or excluded as provided by this section, the election to confirm the district required by Section 49.102 shall be to confirm the district as modified.

SECTION 22. Section 49.351, Water Code, is amended by amending Subsections (a)-(c) and (g)-(j) and adding Subsection (l) to read as follows:

(a) A district providing potable water or sewer service to household users may establish, operate, and maintain a fire department to perform all fire-fighting activities within the district as provided in this subchapter and may issue bonds or impose a mandatory fee, with voter approval, ~~[bonds]~~ for financing a plan approved in accordance with this section, ~~[the establishment of the fire department]~~ including the construction and purchase of necessary buildings, facilities, land, and equipment and the provision of an adequate water supply.

(b) After approval of the district electors of a plan to operate, ~~[or]~~ jointly operate, or jointly fund the operation of a fire department, and after complying with Subsections (g), (h), and (i), the district or districts shall provide an adequate system and water supply for fire-fighting purposes, may purchase necessary land, may construct and purchase necessary buildings, facilities, and equipment, and may employ or contract with a fire department to employ all necessary personnel including supervisory personnel to operate the fire department.

(c) Bonds ~~[issued]~~ for financing a plan approved in accordance with this section ~~[establishment of the fire department]~~ shall be authorized and may be issued, and a district shall be authorized to levy a tax to pay the principal of and interest on such bonds, as provided by law for authorization and issuance of other bonds of the district.

(g) A district or districts proposing to act jointly shall develop a detailed plan for the establishment, operation, and maintenance of the proposed department, including a detailed presentation of all financial requirements. If a district is entering into a contract under Subsection (e), the district shall develop a plan that describes ~~[in detail]~~ the contract and ~~[facilities and equipment to be devoted to service to the district and all proposals for providing the service and that]~~ includes a presentation of the financial requirements under the contract. A plan required by this subsection may be included in a plan or report otherwise required by this title for the creation of a district or may be submitted to the commission for approval at any time after the creation of the district. ~~[Before adoption of a plan and any contract by the district, the board shall hold a hearing at which any person residing in the district may present testimony for and against the proposed plan and any proposed contract. Notice of the hearing and the place at which the plan and any contract may be examined shall be posted in two public places within the district at least 10 days before the date of the hearing.]~~

(h) If a plan was not approved by the commission at the time of the district's creation, after ~~[After]~~ adoption of the plan and any contract by the board, the plan and financial presentation, together with any contract and a written report in a form prescribed by the executive director describing existing fire departments and fire-fighting services available within 25 miles of the boundaries of the district, shall be submitted to the executive director for consideration by the commission under rules adopted by the commission. ~~[Before approval or disapproval, the commission shall hold a hearing. Notice of the hearing before the commission shall be posted by the board in at least two public places in the district at least five days before the hearing.]~~ Before the commission approves the application, it must find that it is economically feasible for the district to implement the plan and meet the provisions of any contract

and shall take into consideration in giving its approval the general financial condition of the district and the economic feasibility of the district carrying out the plan or meeting the obligations of the contract. A plan approved by the commission as part of the creation of a district does not require further commission approval unless the district materially alters the plan.

(i) After approval of a plan by the commission, the district shall submit to the electors of the district at the election to approve bonds or to impose a mandatory fee for financing the plan, or if no bonds or fees are to be approved, at an election called for approval of the plan, which may be held in conjunction with an election required by Section 49.102, the proposition of whether or not the plan should be implemented or entered into by the district. The ballots at the election shall be printed, as applicable, to provide for voting for or against the proposition: "The implementation of the plan for (operation/joint operation) of a fire department"; or "The plan and contract to provide fire-fighting services for the district."

(j) ~~[No funds of the district may be used to establish a fire department, to enter into joint operation of a fire department, or to contract for fire-fighting services without the approval of a plan by the electors as provided in this section. However, the district may use available funds for preparation of a plan and any contract.]~~ The operation of a fire department or provision of fire-fighting services is an essential public necessity, and a district may discontinue any and all services, including water and sewer service, to any person who fails to timely pay fire department service fees or any other assessment adopted by the district to support the fire department or the provision of fire-fighting services.

(l) Notwithstanding the requirements of Subsections (a)-(j), a district providing potable water or sewer service to household users may as part of its billing process collect from its customers a voluntary contribution on behalf of organizations providing fire-fighting activities to the district. A district that chooses to collect a voluntary contribution under this subsection must give reasonable notice to its customers that the contribution is voluntary. Water and sewer service may not be terminated as a result of failure to pay the voluntary contribution.

SECTION 23. Chapter 49, Water Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. RECREATIONAL FACILITIES

Sec. 49.461. POLICY AND PURPOSE. (a) The legislature finds that:

(1) the provision of parks and recreational facilities is necessary and desirable for the health and well-being of the people of this state;

(2) it is the policy of the state and the purpose of this subchapter to encourage persons in districts to provide parks and recreational facilities for their use and benefit;

(3) within constitutional limitations, the power to enact laws vested in the legislature by Section 1, Article III, Texas Constitution, is supreme;

(4) there is no constitutional inhibition that would prohibit the legislature from authorizing districts to acquire, own, develop, construct, improve, manage, operate, and maintain parks and recreational facilities; and

(5) the general legislative power alone is adequate to support the enactment of this subchapter without reference to any specific constitutional authorization.

(b) This subchapter provides complete authority to a district to develop and maintain recreational facilities.

Sec. 49.462. DEFINITIONS. In this subchapter:

(1) "Recreational facilities" means parks, landscaping, parkways, greenbelts, sidewalks, trails, public right-of-way beautification projects, and recreational equipment and facilities. The term includes associated street and security lighting.

(2) "Develop and maintain" means to acquire, own, develop, construct, improve, manage, maintain, and operate.

Sec. 49.463. AUTHORIZATION OF RECREATIONAL FACILITIES. In addition to the other purposes for which a district is created, a district is created for the purpose of developing and maintaining recreational facilities for the people in the district. A district may accomplish this purpose as provided in this subchapter.

Sec. 49.464. ACQUISITION OF AND PAYMENT FOR RECREATIONAL FACILITIES. (a) A district may not issue bonds supported by ad valorem taxes to pay for the development and maintenance of recreational facilities.

(b) Except as provided by Subsection (a), a district may acquire recreational facilities and obtain funds to develop and maintain them in the same manner as authorized elsewhere in this code for the acquisition, development, and maintenance of other district facilities. A district may charge fees directly to the users of recreational facilities and to water and wastewater customers of the district to pay for all or part of the cost of their development and maintenance. To enforce payment of an unpaid fee charged under this subsection, the district may:

(1) seek legal restitution of the unpaid fee; and

(2) refuse use of a recreational facility to the person who owes the unpaid fee.

(c) The district may not refuse use of facilities or services other than recreational facilities to enforce an unpaid fee.

Sec. 49.465. STANDARDS. The board by rule shall establish standards for recreational facilities to be developed and maintained by a district and for the allocation of a district's funds for developing and maintaining recreational facilities in relation to a district's financial requirements for other purposes. To prevent duplication of recreational facilities provided by other governmental entities, rules adopted by the board under this subsection must require a district, before developing recreational facilities, to make findings that the size and location of the facilities have been established in consideration of municipal or county recreational facilities, whether existing or proposed, that serve or will serve the area in which the district is located.

SECTION 24. Section 51.013(a), Water Code, is amended to read as follows:

(a) A petition requesting creation of a district shall be signed by a majority of the persons who hold title to land in the proposed district which represents a total value of more than 50 percent of the value of all the land in the proposed district as indicated by the [county] tax rolls of the central appraisal district. If there are more than 50 persons holding title to land in the proposed district, the petition is sufficient if signed by 50 of them.

SECTION 25. Subchapter D, Chapter 51, Water Code, is amended by adding Section 51.122 to read as follows:

Sec. 51.122. ADOPTING RULES AND REGULATIONS. A district may adopt and enforce reasonable rules and regulations to:

(1) secure and maintain safe, sanitary, and adequate plumbing installations, connections, and appurtenances as subsidiary parts of the district's sanitary sewer system;

(2) preserve the sanitary condition of all water controlled by the district;
(3) prevent waste or the unauthorized use of water controlled by the district;
(4) regulate privileges on any land or any easement owned or controlled by
the district; or

(5) provide and regulate a safe and adequate freshwater distribution system.

SECTION 26. Chapter 51, Water Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. ENFORCEMENT

Sec. 51.221. PENALTY FOR VIOLATION OF REGULATION. A person who violates a regulation adopted by a district under this chapter or other law commits an offense. An offense under this section is a Class C misdemeanor.

SECTION 27. Section 53.021, Water Code, is amended to read as follows:

Sec. 53.021. OFFICERS TO BE ELECTED. In the election, five supervisors [and the tax assessor and collector] are elected.

SECTION 28. Section 54.014, Water Code, is amended to read as follows:

Sec. 54.014. PETITION. When it is proposed to create a district, a petition requesting creation shall be filed with the commission. The petition shall be signed by a majority in value of the holders of title of the land within the proposed district, as indicated by the [county] tax rolls of the central appraisal district. If there are more than 50 persons holding title to the land in the proposed district, as indicated by the [county] tax rolls of the central appraisal district, the petition is sufficient if it is signed by 50 holders of title to the land.

SECTION 29. Section 54.236, Water Code, is amended to read as follows:

Sec. 54.236. STREET OR SECURITY LIGHTING. Subject to the provisions of this section, a district may purchase, install [accept], operate, and maintain street lighting or security lighting within public utility easements or public rights-of-way within the boundaries of the district. [Such street or security lighting facilities must have been constructed by an owner or developer of property within the district and must have been required by a city as a condition to the city granting its consent to the creation of the district pursuant to Section 54.016 of this code.] A district may not issue bonds supported by ad valorem taxes to pay for the purchase, installation, [development] and maintenance of street or security lighting.

SECTION 30. Section 54.772(1), Water Code, is amended to read as follows:

(1) "Recreational facilities" means parks, landscaping, parkways, greenbelts, sidewalks, trails, public right-of-way beautification projects, and recreational equipment and facilities. The term includes associated street and security lighting.

SECTION 31. Section 54.774(a), Water Code, is amended to read as follows:

(a) A district may not issue bonds supported by ad valorem taxes to pay for the development and maintenance of recreational facilities.

SECTION 32. Section 57.092(a), Water Code, is amended to read as follows:

(a) The district may enter into all necessary and proper contracts and employ all persons and means necessary to purchase, acquire, build, construct, complete, carry out, maintain, protect, and in case of necessity, add to and rebuild, all works and improvements [within the district] necessary or proper to fully accomplish a reclamation plan lawfully adopted for the district.

SECTION 33. Subchapter D, Chapter 57, Water Code, is amended by adding Section 57.093 to read as follows:

Sec. 57.093. ADOPTING RULES AND REGULATIONS. A district may adopt and enforce reasonable rules and regulations to:

- (1) preserve the sanitary condition of all water controlled by the district;
- (2) prevent waste or the unauthorized use of water controlled by the district;
- (3) regulate privileges on any land or any easement owned or controlled by the district;
- (4) regulate the design and construction of improvements and facilities that outfall, connect, or tie into district improvements and facilities; or
- (5) require the district's review and approval of drainage plans for property within the district.

SECTION 34. Subchapter B, Chapter 402, Local Government Code, is amended by adding Section 402.0205 to read as follows:

Sec. 402.0205. REVENUE BONDS TO PAY FOR DISTRICT SERVICES UNDER CONTRACT. (a) In this section, "district" has the meaning assigned by Section 49.001, Water Code.

(b) If a district contracts with a municipality to provide all or part of the water or wastewater services to the municipality, the municipality may issue bonds payable from the revenues of its water and wastewater system to provide funds to make payments owed by the municipality to the district under the contract.

SECTION 35. Subchapter Z, Chapter 402, Local Government Code, is amended by adding Section 402.908 to read as follows:

Sec. 402.908. SALE OF WATER OR SEWER SYSTEM. A municipality, without an election, may sell to a water district operating under the authority of Section 59, Article XVI, Texas Constitution, a water or sewer system owned by the municipality.

SECTION 36. (a) In this section, "district" has the meaning assigned by Section 49.001, Water Code.

(b) The following are validated and confirmed in all respects:

(1) the creation of a district and all proceedings related to the creation of the district, effective as of the date on which the creation or related proceedings occurred; and

(2) any act or proceeding of a district, including an election, not excepted by this section and taken not more than two years before the effective date of this Act, effective as of the date on which the act or proceeding occurred.

(c) Subsection (b) of this section does not apply to:

(1) an act, proceeding, director, other official, bond, or other obligation the validity of which or of whom is the subject of litigation that is pending on the effective date of this Act; or

(2) a governmental act or proceeding that, under the law of this state at the time the act or proceeding occurred, was a misdemeanor or a felony.

SECTION 37. Sections 53.024, 57.152, and 57.153, Water Code, are repealed.

SECTION 38. 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

Amend **CSSB 1444** by adding an appropriately numbered new SECTION to the bill to read as follows, and appropriately renumbering subsequent SECTIONS of the bill:

SECTION _____. Section 49.278(a), Water Code, is amended to read as follows:

(a) This subchapter does not apply to:

(1) equipment, materials, or machinery purchased by the district at an auction that is open to the public;

(2) contracts for personal or professional services or for a utility service operator;

(3) contracts made by a district engaged in the distribution and sale of electric energy to the public; [or]

(4) contracts for services or property for which there is only one source or for which it is otherwise impracticable to obtain competition; or

(5) high technology procurements.

Floor Amendment No. 3

Amend **CSSB 1444** by adding the following appropriately numbered SECTION to the bill to read as follows and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter Z, Chapter 402, Local Government Code, is amended by adding Section 402.908 to read as follows:

Sec. 402.908. PROHIBITED EMPLOYMENT OF OR CONTRACTING WITH FORMER TRUSTEE OR BOARD MEMBER. (a) This section applies to a municipality that creates a board of trustees or other board to manage and control a water, wastewater, storm water, or drainage utility system that the municipality owns.

(b) The municipality or a board of trustees or other board described by Subsection (a) may not employ or contract with an individual who was a member of the board before the second anniversary of the date the individual ceased to be a member of the board.

Floor Amendment No. 4

Amend **CSSB 1444** as follows:

1. Add a new SECTION ____ to read as follows:

SECTION _____. Subchapter I, Chapter 49, Water Code, is amended by adding Section 49.280 to read as follows:

Section 49.280. COMPLIANCE WITH MUNICIPAL REQUIREMENTS. A district construction project must comply with any applicable municipal platting, environmental, or zoning requirements within the municipality's corporate limits and with applicable requirements of a consent agreement or other agreement between the district and the municipality within the municipality's extraterritorial jurisdiction. A district construction project is not otherwise subject to any requirements of a municipality if the project is located outside the municipality's corporate limits. This section does not apply to a municipality with a population of 1.9 million or more, or to the extraterritorial jurisdiction of such a municipality.

Floor Amendment No. 5

Amend **CSSB 1444** as follows:

1. On page 24, after line 23, add a new SECTION 36 to read as follows:

SECTION 36. Notwithstanding Section 26.028(c), Water Code, a public hearing on an application by a district for a commission permit under Section 26.027, Water Code, for effluent composed of disinfected sewage or municipal waste proposing secondary or greater treatment and no discharge of pollutants into any water in the state shall be in the same manner as provided by Section 382.0561, Health and Safety Code.

2. Renumber the subsequent SECTIONS appropriately.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 1444** on third reading on page 18, line 6, by adding a new Section 23 as follows and renumbering subsequent sections as necessary:

SECTION 23. Subchapter B, Chapter 101, Civil Practice and Remedies Code, is amended by adding Section 101.0211 to read as follows:

Sec. 101.0211. NO LIABILITY FOR JOINT ENTERPRISE. The common law doctrine of vicarious liability because of participation in a joint enterprise does not impose liability on a water district created pursuant to either Sections 52(b)(1) and (2), Article III, or Section 59, Article XVI, Texas Constitution, regardless of how created, for a claim brought under this chapter.

Floor Amendment No. 2 on Third Reading

Amend **CSSB 1444** on third reading by adding a new appropriately numbered SECTIONS to the bill to read as follows:

SECTION _____. Sections 4.03(a) and (b), Chapter 1029, Acts of the 76th Legislature, Regular Session, 1999, are amended to read as follows:

(a) The authority may establish fees, rates, and charges, and classifications of fee and rate payers, as necessary to enable the authority to fulfill the authority's purposes and regulatory obligations provided by this Act.

(b) The authority may charge against the owner of a well located in the authority's boundaries a fee on the amount of water pumped from the well. The board shall establish the rate of a fee under this subsection only after a special meeting on the fee. The board shall by rule exempt from the fee under this subsection those classes of wells that are not subject to groundwater reduction requirements imposed by the subsidence district, except that if any of those classes of wells become subject at a future date to a groundwater reduction requirement imposed by the subsidence district, then the authority may after that date charge the fee under this subsection to those affected classes of wells. The board by rule may exempt any other classes of wells from the fee under this subsection. The board may not apply the fee to a well:

(1) with a casing diameter of less than five inches that serves a single-family dwelling;

(2) regulated under Chapter 27, Water Code;

(3) used for irrigation of agricultural crops; or

(4) ~~that produces 10 million gallons or less annually; or~~

~~[(5)] used solely for electric generation.~~

SECTION _____. Section 4.06(a), Chapter 1029, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

(a) The authority may:

(1) acquire and provide by purchase, gift, [or] lease, contract, or any other legal means, a water treatment or supply system, or any other works, plants, improvements, or facilities necessary or convenient to accomplish the purposes of the authority, or any interest in those assets, inside of or outside of the authority's boundaries;

(2) design, finance, or construct a water treatment or supply system, or any other supply systems, or any other works, plants, improvements, or facilities necessary or convenient to accomplish the purposes of the authority, and provide water services inside of or outside of the authority's boundaries;

(3) maintain, operate, lease, or sell a water treatment or supply system, or any other works, plants, improvements, or facilities necessary or convenient to accomplish the purposes of the authority, that the authority constructs or acquires inside of or outside of the authority's boundaries; and

(4) contract with any person to operate or maintain a water treatment or supply system the person owns.

The amendments were read.

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

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 1444** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chair; Barrientos, Lucio, Haywood, and Armbrister.

CONFERENCE COMMITTEE ON HOUSE BILL 2912

Senator Harris called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2912** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 2912** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chair; Brown, Bernsen, Armbrister, and Sibley.

SENATE BILL 637 WITH HOUSE AMENDMENT

Senator Armbrister called **SB 637** 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 637** by striking SECTION 3 and substituting the following:

"SECTION 3. Section 431.101, Transportation Code is amended by adding Subsection (h) to read as follows:

(h) A local government corporation formed by a navigation district shall not condemn a right-of-way through any part of a municipality without the consent of the municipality's governing body."

The amendment was read.

Senator Armbrister moved to concur in the House amendment to **SB 637**.

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

Present-not voting: Mr. President.

SENATE BILL 1037 WITH HOUSE AMENDMENT

Senator Ellis called **SB 1037** 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 1037** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to authorizing the comptroller to establish a program to permit certain certified public accountants to perform certain audits.

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

SECTION 1. Subchapter B, Chapter 151, Tax Code, is amended by adding Section 151.0232 to read as follows:

Sec. 151.0232. CPA AUDIT PROGRAM. (a) The comptroller by rule may establish a program in which a taxpayer may hire a certified public accountant who is not employed by the comptroller to perform an audit to determine a taxpayer's liability for a tax imposed under this chapter.

(b) A program established under Subsection (a) must include:

- (1) eligibility requirements for taxpayer participation;
- (2) training requirements and qualifications for a certified public accountant who is hired to perform an audit under the program; and
- (3) safeguards to protect the confidentiality of information used in connection with the audit, including a provision that a certified public accountant hired under the program is subject to the requirements and penalties that apply to an employee of the comptroller regarding the confidentiality and disclosure of information obtained from an audit.

(c) Unless the audit or other information available to the comptroller discloses fraud or wilful evasion of the tax, the comptroller may not assess a penalty and may waive all or part of the accrued interest on an amount identified to be due as a result of an audit performed under Subsection (a).

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

The amendment was read.

Senator Ellis moved to concur in the House amendment to **SB 1037**.

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

Present-not voting: Mr. President.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 577 ADOPTED

Senator Bivins called from the President's table the Conference Committee Report on **SB 577**. The Conference Committee Report was filed with the Senate on Thursday, May 17, 2001.

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 415 ADOPTED

Senator Carona called from the President's table the Conference Committee Report on **SB 415**. The Conference Committee Report was filed with the Senate on Monday, May 14, 2001.

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

SENATE BILL 414 WITH HOUSE AMENDMENTS

Senator Madla called **SB 414** 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.

Floor Amendment No. 1

Amend **SB 414** (house committee printing) as follows:

(1) In SECTION 1.02 of the bill, in the sixth sentence of Section 3(b), Article 21.01-1, Insurance Code (page 9, line 26), strike "four hours" and substitute "two hours".

(2) In SECTION 1.11 of the bill, at the end of Section 2, Article 21.07, Insurance Code (page 45, between lines 11 and 12), insert:

(v) An entity chartered by the federal Farm Credit Administration under the farm credit system established under 12 U.S.C. Section 2001 et seq., as amended, may be licensed by the department to solicit insurance in this state, as provided by 12 U.S.C. Section 2218, as amended, and in the manner provided for the licensing of a corporation under this section.

(3) In SECTION 3.01 of the bill, in Section 6(b), Article 21.14, Insurance Code (page 67, lines 23-24), strike "a production credit association or bank for a

cooperative" and substitute "an entity chartered by the federal Farm Credit Administration".

(4) After SECTION 7.03 of the bill (page 131, between lines 9 and 10) insert the following section, appropriately numbered:

SECTION 7.____. Article 8.24(h), Insurance Code, is amended to read as follows:

(h) The carrier may [~~It shall~~] underwrite business in Texas only through [~~its resident Texas~~] agents [~~thereunto duly authorized by it in writing and duly~~] licensed by the [~~such~~] department under [~~the provisions of~~] Article 21.09 or 21.14 of this code[, ~~as the same now exists or as it may be amended hereafter, and the license issued to such Texas agents shall specially authorize them to write for such foreign carriers complying herewith with the risks authorized hereby~~].

(5) In SECTION 8.01(10)(B) of the bill (page 139, line 18), strike "Subsection (h),".

(6) Renumber sections of the bill appropriately.

Floor Amendment No. 2

Amend **SB 414** (house committee printing) in SECTION 4.01 of the bill, in amended Section 1(a)(2)(A), Article 21.11, Insurance Code (page 113, line 12), after the semicolon, by inserting "or".

The amendments were read.

On motion of Senator Madla, the Senate concurred in the House amendments to **SB 414** by a viva voce vote.

CONCLUSION OF MORNING CALL

The President at 10:24 a.m. announced the conclusion of morning call.

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate leaders of Native American tribes in San Antonio: Ramon Vasquez y Sanchez, Auteca Paguame Tribe; Mickey Killian, Pampoia Tribe; Ted Herrera, Venado Tribe; and Raymond Hernandez, Panama Payaya Tribe; accompanied by a delegation of tribal members.

The Senate welcomed its guests.

(Senator Truan in Chair)

HOUSE BILL 3692 ON THIRD 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 third reading and final passage:

HB 3692, Relating to the creation of the Greater Southeast Management District; providing authority to impose a tax and issue bonds.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

STATEMENT OF LEGISLATIVE INTENT

Senator Ellis submitted the following statement of legislative intent for **HB 3692**:

It is the legislative intent of the authors that property located within the Greater Southeast Management District which is subject to an ad valorem property tax exemption under the Texas Constitution or the Texas Property Tax Code (such as property owned by Texas Southern University, University of Houston, The University of Texas System, Texas Medical Center, and the other Texas Medical Center member institutions) shall be excluded and will not be subject to any assessments, impact fees, or other charges, either direct or in-kind, imposed by the District.

ELLIS

GUESTS PRESENTED

Senator Carona was recognized and introduced to the Senate fourth-grade students from Walnut Glen Academy for Excellence in Garland.

The Senate welcomed its guests.

(President in Chair)

HOUSE BILL 2518 ON THIRD READING

Senator Haywood 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:

HB 2518, Relating to the issuance of certain permits for the emission of air contaminants.

There was objection.

Senator Haywood then moved to suspend the regular order of business and take up **HB 2518** for consideration at this time.

The motion prevailed by the following vote: Yeas 21, Nays 7, Present-not voting 2.

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

Nays: Barrientos, Gallegos, Moncrief, Shapleigh, Truan, Van de Putte, West.

Present-not voting: Bernsen, Mr. President.

Absent: Lindsay.

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

RECORD OF VOTES

Senators Barrientos, Gallegos, Moncrief, Shapleigh, Truan, Van de Putte, and West asked to be recorded as voting "Nay" on the final passage of **HB 2518**.

HOUSE BILL 1359 ON THIRD READING

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

HB 1359, Relating to the transfer of course credit between public institutions of higher education.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

HOUSE BILL 310 ON THIRD 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 third reading and final passage:

HB 310, Relating to the establishment and operation of veterans cemeteries.

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

HOUSE BILL 706 ON THIRD 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 third reading and final passage:

HB 706, Relating to the emergency possession of and termination of the parent-child relationship of certain abandoned children.

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

HOUSE BILL 2164 ON THIRD 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 third reading and final passage:

HB 2164, Relating to the sale of Woodlawn by the State Preservation Board.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2262 ON THIRD READING**

On motion of Senator Madla 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 2262, Relating to the requirements for membership on the Texas Optometry Board.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

HOUSE BILL 2845 ON THIRD 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 third reading and final passage:

HB 2845, Relating to the creation of an initiative to promote the commercialization of fuel cell technologies, including tax exemptions and reductions for certain corporations.

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

HOUSE BILL 3016 ON THIRD 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 third reading and final passage:

HB 3016, Relating to the use of certain electronically readable information to comply with certain provisions of the Alcoholic Beverage Code.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

HOUSE BILL 2439 ON THIRD 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 third reading and final passage:

HB 2439, Relating to uses of balances in the inaugural fund.

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

**COMMITTEE SUBSTITUTE
HOUSE BILL 1018 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:

CSHB 1018, Relating to certain applications submitted to and reexaminations given by the Texas State Board of Medical Examiners.

The bill was read second time.

Senator Haywood offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 1018** by striking SECTION 2 of the bill (senate committee printing page 1, lines 22 through 37) and renumbering the SECTIONS of the bill accordingly.

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

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSHB 1018** (senate committee printing) as follows:

(1) Strike SECTION 1 of the bill (page 1, lines 13 through 21) and substitute the following appropriately numbered section:

SECTION _____. Subchapter C, Chapter 155, Occupations Code, is amended by adding Section 155.1025 to read as follows:

Sec. 155.1025. EXPEDITED PROCESS FOR CERTAIN APPLICANTS. (a) The board shall adopt rules for expediting any application for a license under this subtitle made by a person who is licensed to practice medicine in another state or country and who submits an affidavit with the application stating that:

(1) the applicant intends to practice in a rural community, as determined by the Center for Rural Health Initiatives; or

(2) the applicant intends to:

(A) accept employment with an entity located in a medically underserved area or health professional shortage area, designated by the United States Department of Health and Human Services, and affiliated with or participating in a public university-sponsored graduate medical education program;

(B) serve on the faculty of the public university-sponsored graduate medical education program; and

(C) engage in the practice of medicine and teaching in a specialty field of medicine that is necessary to obtain or maintain the accreditation of the public university-sponsored graduate medical education program by the Accreditation Council for Graduate Medical Education.

(b) The board shall notify the Texas Department of Health on receipt of an application for expedited processing under Subsection (a)(2).

(2) Insert the following appropriately numbered section of the bill:

SECTION _____. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.947 to read as follows:

Sec. 51.947. IMMIGRATION VISA WAIVERS FOR FACULTY PHYSICIANS. (a) In this section, "eligible area" means the area served by the regional academic health center established under Section 74.611.

(b) On receipt of an application from a foreign applicant for the expedited processing of a license under Section 155.1025(a)(2), Occupations Code, the Texas Department of Health shall request the United States Department of State to recommend the waiver of 8 U.S.C. Section 1182(e) under exceptions provided by 8 U.S.C. Section 1184(l) for not more than 20 qualified alien physicians each year who agree, beginning not later than the 90th day after the date of approval of the waiver and continuing for at least three years, to:

(1) accept employment with an entity:

(A) located in a medically underserved area or health professional shortage area, as designated by the United States Department of Health and Human Services, within an eligible area; and

(B) affiliated with or participating in a public university-sponsored graduate medical education program;

(2) serve on the faculty of the public university-sponsored graduate medical education program;

(3) engage in the practice of medicine and teaching in a specialty field of medicine that is necessary to obtain or maintain the accreditation of the public university-sponsored graduate medical education program by the Accreditation Council for Graduate Medical Education; and

(4) join a medical practice located in a medically underserved area or health professional shortage area, as designated by the United States Department of Health and Human Services, within an eligible area.

(3) Renumber the sections of the bill accordingly.

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.

CSHB 1018 as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1018 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 **CSHB 1018** 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, Haywood, Jackson, Lindsay, Lucio, Madla, Moncrief, Nelson, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Ogden.

Present-not voting: Mr. President.

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

GUESTS PRESENTED

Senator Madla was recognized and introduced to the Senate city and county officials from the City of Balmorhea: Mayor Ruben Fuentes, Reeves County Judge Jimmy Galindo, Commissioner Herman Tarin, Water Superintendent Luis Contreras, and aldermen Ike Ward and Ricky Herrera, accompanied by a delegation of citizens of Balmorhea.

The Senate welcomed its guests.

BILLS AND RESOLUTION SIGNED

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

HB 42, HB 65, HB 73, HB 84, HB 122, HB 166, HB 200, HB 335, HB 371, HB 457, HB 501, HB 510, HB 534, HB 602, HB 741, HB 819, HB 858, HB 946, HB 947, HB 952, HB 998, HB 1718, HCR 105.

HOUSE BILL 792 ON THIRD 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 third reading and final passage:

HB 792, Relating to certain procedures regarding state bar disciplinary proceedings.

The bill was read third time.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 1

Delete second reading Floor Amendment No. 4 to **HB 792** in its entirety and replace with the following:

(o) Whenever a grievance is either dismissed as an Inquiry or dismissed as a Complaint after an investigatory hearing in accordance with the Texas Rules of Disciplinary Procedure and that dismissal has become final, the respondent attorney may thereafter deny that a grievance was pursued. In any disciplinary action which is tried to verdict before an evidentiary panel or a district court and there is a take-nothing judgment entered which becomes final, the respondent attorney may file a motion with the tribunal seeking expunction of the tribunal's file on the matter. In the event an expunction is granted, the evidentiary panel or district court shall order that all records be destroyed other than statistical or identifying information maintained by the chief disciplinary counsel pertaining to any grievance which formed the basis of the disciplinary action and the respondent attorney may thereafter deny any grievance which formed the basis of the disciplinary action was filed.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

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

CSHB 792 as amended was finally passed by a viva voce vote.

HOUSE BILL 2804 ON THIRD READING

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

HB 2804, Relating to certain instruments recorded to create liens on property or to show satisfaction of a judgment.

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

**VOTES RECONSIDERED ON
HOUSE BILL 3667**

On motion of Senator Armbrister and by unanimous consent, the vote by which **HB 3667** was passed to third reading was reconsidered:

HB 3667, Relating to insurance for, and a fireworks sales tax for the support of, certain volunteer fire departments.

Question—Shall **HB 3667** be passed to third reading?

On motion of Senator Armbrister and by unanimous consent, the vote by which Floor Amendment No. 1 to **HB 3667** was adopted was reconsidered.

Question—Shall Floor Amendment No. 1 to **HB 3667** be adopted?

On motion of Senator Lindsay and by unanimous consent, Floor Amendment No. 1 was withdrawn.

The bill was again passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Staples and Truan asked to be recorded as voting "Nay" on the passage of **HB 3667** to third reading.

HOUSE BILL 3667 ON THIRD 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 third reading and final passage.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 2, Present-not voting 1.

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

Nays: Staples, Truan.

Present-not voting: Mr. President.

COMMITTEE SUBSTITUTE SENATE BILL 1827 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 engrossment:

CSSB 1827, Relating to certain fees for students attending institutions in the Texas State University System.

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 1827** as follows:

1. On page 1, line 22, strike "by more than 10 percent".
2. On page 1, line 47, strike "by more than 10 percent".

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.

CSSB 1827 as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1827 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 **CSSB 1827** 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)

(Senator Carona in Chair)

**COMMITTEE SUBSTITUTE
HOUSE JOINT RESOLUTION 82 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 third reading:

CSHJR 82, Proposing a constitutional amendment authorizing the Veterans' Land Board to issue additional general obligation bonds and to use certain assets in certain funds to provide for veterans cemeteries.

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

**COMMITTEE SUBSTITUTE
HOUSE JOINT RESOLUTION 82 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 **CSHJR 82** be placed on its third reading and final passage.

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

Present-not voting: Mr. President.

The resolution was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

HOUSE JOINT RESOLUTION 2 ON SECOND READING

On motion of Senator Madla 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 2, Proposing a constitutional amendment authorizing a commissioners court of a county to declare the office of constable in certain precincts dormant and providing a procedure for reinstatement of the office.

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

HOUSE JOINT RESOLUTION 2 ON THIRD READING

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HJR 2** be placed on its third reading and final passage.

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

Present-not voting: Mr. President.

The resolution was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

HOUSE BILL 1200 ON SECOND READING

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

HB 1200, Relating to the enactment of the Texas Economic Development Act, authorizing certain ad valorem tax incentives for economic development, including authorizing school districts to provide tax relief for certain corporations and limited liability companies that make large investments that create jobs in this state, to authorizing the imposition of certain impact fees, and to continuing the Property Redevelopment and Tax Abatement Act.

There was objection.

Senator Harris then moved to suspend the regular order of business and take up **HB 1200** for consideration at this time.

The motion prevailed by the following vote: Yeas 25, Nays 5, Present-not voting 1.

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

Nays: Bivins, Ogden, Shapleigh, Truan, Van de Putte.

Present-not voting: Mr. President.

The bill was read second time.

Senator Harris offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 1200** as follows:

(1) Page 28, between lines 2 and 3, insert a new SECTION 8 to read as follows and renumber the subsequent SECTIONS accordingly:

SECTION 8. Section 42.302, Education Code, is amended by adding subsection (d) to read as follows:

(d) For purposes of this section, school district taxes for which credit is granted under Subchapter D, Chapter 313, Tax Code, are considered taxes collected by the school district as if the taxes were paid when the credit for the taxes was granted.

(2) Page 21, line 8, strike "each of the first eight" and substitute "the second and subsequent six".

(3) Page 21, line 11, after the words "equal to" strike "one-eighth" and insert "one-seventh".

(4) Page 7, line 4 between "except for" and "equipment", insert "new".

(5) Page 6, lines 24 and 25, strike ", and at least 80 percent of all the new jobs must be qualifying jobs".

(6) Page 10, between lines 1 and 2 add a new subsection (c) to read as follows and re-letter subsequent subsections accordingly:

(c) To be eligible for a limitation on appraised value under this subchapter, at least 80% of all the new jobs created by the property owner must be qualified jobs as defined by Section 313.021(3).

(7) On page 18, lines 5 thru 7, strike "In this subchapter, "qualified property" means land on which the owner of the land proposes to create at least 10 qualifying jobs." and substitute "For purposes of this subchapter, a property owner is required to create only at least 10 new jobs on the owner's qualified property. At least 80 percent of all the new jobs created must be qualifying jobs as defined by Section 313.021(3)."

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

Senator Harris offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 1200** on page 10, line 68 to strike "2007" and insert "2005".

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

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 1200** as follows:

(1) Amend SECTION 1 (committee report page 8, line 6) by inserting between "territory" and "in" the following: "in a strategic investment area, as defined by sec. 171.721, Tax Code, or".

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

Senator Bernsen offered the following amendment to the bill:

Floor Amendment No. 3

Amend **HB 1200**, Senate Committee Printing, as follows:

On page 8, lines 14-15, strike "less than 15 percent.", and insert "not more than three percent per annum."

On motion of Senator Bernsen and by unanimous consent, Floor Amendment No. 3 was withdrawn.

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

HB 1200 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Bivins, Gallegos, Ogden, Shapleigh, Truan, and Van de Putte asked to be recorded as voting "Nay" on the passage of **HB 1200** to third reading.

HOUSE BILL 1200 ON THIRD READING

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1200** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 6, Present-not voting 1.

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

Nays: Bivins, Gallegos, Ogden, Shapleigh, Truan, Van de Putte.

Present-not voting: Mr. President.

The bill was read third time.

(Senator Armbrister in Chair)

Senator Bernsen again offered the following amendment to the bill:

Floor Amendment No. 3

Amend **HB 1200**, Senate Committee Printing, as follows:

On page 8, lines 14-15, strike "less than 15 percent.", and insert "not more than three percent per annum."

By unanimous consent, 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.

HB 1200 as again amended was finally passed by the following vote: Yeas 23, Nays 7, Present-not voting 1.

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

Nays: Barrientos, Bivins, Gallegos, Ogden, Shapleigh, Truan, Van de Putte.

Present-not voting: Mr. President.

PERSONAL PRIVILEGE STATEMENT

Senator Harris was recognized to address the Senate on a matter of personal privilege.

GUESTS PRESENTED

Senator Staples was recognized and introduced to the Senate students and their teachers from Nichols Intermediate School in Jacksonville.

The Senate welcomed its guests.

HOUSE BILL 1118 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 1118, Relating to the adjudication and disposition of juvenile conduct and the administration of the juvenile justice system.

The bill was read second time.

Senator West offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 1118** as follows:

SUBCHAPTER D. LOCAL JUVENILE JUSTICE
INFORMATION SYSTEM

Sec. 58.301. DEFINITIONS. In this subchapter:

(1) "County juvenile board" means a juvenile board created under Chapter 152, Human Resources Code.

(2) "Governmental placement facility" means a juvenile residential placement facility operated by a unit of government.

(3) "Governmental service provider" means a juvenile justice service provider operated by a unit of government.

(4) "Local juvenile justice information system" means a county or multi-county computerized database of information concerning children, with data entry and access by the partner agencies that are members of the system.

(5) "Partner agency" means a governmental service provider or governmental placement facility that is required by this subchapter to be a member of a local juvenile justice information system or that has applied to be a member of a local juvenile justice information system and has been approved by the county juvenile board or regional juvenile board committee as a member of the system.

(6) "Regional juvenile board committee" means a committee that is composed of two members from each county juvenile board in a region that comprises a multi-county local juvenile information system.

Sec. 58.302. PURPOSES OF SYSTEM. The purposes of a local juvenile justice information system are to:

(1) provide accurate information at the county or regional level relating to children who come into contact with the juvenile justice system;

(2) assist in the development and delivery of services to children in the juvenile justice system;

(3) assist in the development and delivery of services to children:

(A) who school officials have reasonable cause to believe have committed an offense for which a report is required under Section 37.015, Education Code; or

(B) who have been expelled, the expulsion of which school officials are required to report under Section 52.041;

(4) provide for an efficient transmission of juvenile records from justice and municipal courts to county juvenile probation departments and the juvenile court and from county juvenile probation departments and juvenile court to the state juvenile justice information system created by Subchapter B;

(5) provide efficient computerized case management resources to juvenile courts, county juvenile probation departments, and partner agencies authorized by this subchapter;

(6) provide a directory of services available to children to the partner agencies to facilitate the delivery of services to children;

(7) provide an efficient means for municipal and justice courts to report filing of charges, adjudications, and dispositions of juveniles to the juvenile court as required by Section 51.08; and

(8) provide a method for agencies to fulfill their duties under Section 58.108, including the electronic transmission of information required to be sent to the Department of Public Safety by Section 58.110(f).

Sec. 58.303. LOCAL JUVENILE JUSTICE INFORMATION SYSTEM. (a) Juvenile justice agencies in a county or region of this state may jointly create and maintain a local juvenile justice information system to aid in processing the cases of children under this code, to facilitate the delivery of services to children in the juvenile justice system, and to aid in the early identification of at-risk and delinquent children.

(b) A local juvenile justice information system must contain the following components:

(1) case management resources for juvenile courts, prosecuting attorneys, and county juvenile probation departments;

(2) reporting systems to fulfill statutory requirements for reporting in the juvenile justice system;

(3) service provider directories and indexes of agencies providing services to children; and

(4) victim-witness notices required under Chapter 57.

(c) A local juvenile justice information system may contain the following components:

(1) electronic filing of complaints or petitions;

(2) electronic offense and intake processing;

(3) case docket management and calendaring;

(4) communications by email or other electronic communications between partner agencies;

(5) reporting of charges filed, adjudications and dispositions of juveniles by municipal and justice courts and the juvenile court, and transfers of cases to the juvenile court as authorized or required by Section 51.08;

(6) reporting to schools under Article 15.27, Code of Criminal Procedure, by law enforcement agencies, prosecuting attorneys, and juvenile courts;

(7) records of adjudications and dispositions, including probation conditions ordered by the juvenile court; and

(8) warrant management and confirmation capabilities.

(d) Membership in a local juvenile justice information system is determined by this subchapter. Membership in a regional juvenile justice information system is

determined by the regional juvenile board committee from among partner agencies that have applied for membership.

Sec. 58.304. TYPES OF INFORMATION CONTAINED IN A LOCAL JUVENILE INFORMATION SYSTEM. (a) Subject to Subsection (d), a local juvenile justice information system must consist of:

(1) information relating to all referrals to the juvenile court of any type, including referrals for conduct indicating a need for supervision and delinquent conduct; and

(2) information relating to:

(A) the juvenile;

(B) the intake or referral of the juvenile into the juvenile justice system for any offense or conduct;

(C) the detention of the juvenile;

(D) the prosecution of the juvenile;

(E) the disposition of the juvenile's case, including the name and description of any program to which the juvenile is referred; and

(F) the probation, placement, or commitment of the juvenile.

(b) To the extent possible and subject to Subsections (a) and (d), the local juvenile justice information system may include the following information for each juvenile taken into custody, detained, or referred under this title:

(1) the juvenile's name, including other names by which the juvenile is known;

(2) the juvenile's date and place of birth;

(3) the juvenile's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;

(4) the juvenile's state identification number and other identifying information;

(5) the juvenile's fingerprints and photograph;

(6) the juvenile's last known residential address, including the census tract number designation for the address;

(7) the name, address, and phone number of the juvenile's parent, guardian, or custodian;

(8) the name and identifying number of the agency that took into custody or detained the juvenile;

(9) each date of custody or detention;

(10) a detailed description of the conduct for which the juvenile was taken into custody, detained, or referred, including the level and degree of the alleged offense;

(11) the name and identifying number of the juvenile intake agency or juvenile probation office;

(12) each disposition by the juvenile intake agency or juvenile probation office;

(13) the date of disposition by the juvenile intake agency or juvenile probation office;

(14) the name and identifying number of the prosecutor's office;

(15) each disposition by the prosecutor;

(16) the date of disposition by the prosecutor;

(17) the name and identifying number of the court;

(18) each disposition by the court, including information concerning custody of a juvenile by a juvenile justice agency or county juvenile probation department;

(19) the date of disposition by the court;

(20) any commitment or release under supervision by the Texas Youth Commission, including the date of the commitment or release; and

(21) information concerning each appellate proceeding.

(c) If the Department of Public Safety assigns a state identification number for the juvenile, the identification number shall be entered in the local juvenile information system.

(d) Information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may not be collected under Subsection (a) or (b).

Sec. 58.305. PARTNER AGENCIES. (a) A local juvenile justice information system for a single county shall include the following partner agencies within that county:

(1) the juvenile court;

(2) justice of the peace and municipal courts;

(3) the county juvenile probation department;

(4) the prosecuting attorneys who prosecute juvenile cases in juvenile court, municipal court, or justice court;

(5) law enforcement agencies;

(6) each public school district in the county;

(7) governmental service providers approved by the county juvenile board; and

(8) governmental placement facilities approved by the county juvenile board.

(b) A local juvenile justice information system for a multi-county region shall include the partner agencies listed in Subsections (a)(1)-(6) for each county in the region and the following partner agencies from within the multi-county region that have applied for membership in the system and have been approved by the regional juvenile board committee:

(1) governmental service providers; and

(2) governmental placement facilities.

Sec. 58.306. ACCESS TO INFORMATION; LEVELS. (a) This section describes the level of access to information to which each partner agency in a local juvenile justice information system is entitled.

(b) Information is at Access Level 1 if the information relates to a child:

(1) who:

school official has reasonable grounds to believe has committed an offense for which a report is required under Section 37.015, Education Code; or

(B) has been expelled, the expulsion of which is required to be reported under Section 52.041; and

(2) who has not been charged with a fineable only offense, a status offense, or delinquent conduct.

(c) Information is at Access Level 2 if the information relates to a child who:

(1) is alleged in a justice or municipal court to have committed a fineable only offense, municipal ordinance violation, or status offense; and

(2) has not been charged with delinquent conduct or conduct indicating a need for supervision.

(d) Information is at Access Level 3 if the information relates to a child who is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision.

(e) Level 1 Access is by public school districts in the county or region served by the local juvenile justice information system.

(f) Level 2 Access is by:

(1) justice of the peace courts that process juvenile cases; and

(2) municipal courts that process juvenile cases.

(g) Level 3 Access is by:

(1) the juvenile court;

(2) the prosecuting attorney;

(3) the county juvenile probation department;

(4) law enforcement agencies;

(5) governmental service providers that are partner agencies; and

(6) governmental placement facilities that are partner agencies.

(h) Access for Level 1 agencies is only to information at Level 1. Access for Level 2 agencies is only to information at Levels 1 and 2. Access for Level 3 agencies is to information at Levels 1, 2, and 3.

Sec. 58.307. CONFIDENTIALITY OF INFORMATION. (a) Information that is part of a local juvenile justice system is not public information and may not be released to the public, except as authorized by law.

(b) Information that is part of a local juvenile justice information system is for the professional use of the partner agencies that are members of the system and may be used only by authorized employees of those agencies to discharge duties of those agencies.

(c) Information from a local juvenile justice information system may not be disclosed to persons, agencies, or organizations that are not members of the system except to the extent disclosure is authorized or mandated by this title.

(d) Information in a local juvenile justice information system is subject to destruction, sealing, or restricted access as provided by this title.

(e) Information in a local juvenile justice information system shall be protected from unauthorized access by a system of access security and any access to information in a local juvenile information system performed by browser software shall be at the level of at least 128-bit encryption. A juvenile board or a regional juvenile board committee shall require all partner agencies to maintain security and restrict access in accordance with the requirements of this Title.

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

Senator West offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **HB 1118** as follows:

(1) In the recital to SECTION 57 of the bill (House Engrossment, page 65, lines 17-18), strike "Section 141.042(e), Human Resources Code, is amended" and substitute "Section 141.042, Human Resources Code, is amended by amending Subsection (e) and adding Subsection (g)".

(2) Between SECTIONS 57 and 58 of the bill (House Engrossment, page 66, between lines 10 and 11), insert the following new Section 141.042(g), Human Resources Code:

(g) Any statement made by a child and any mental health data obtained from the child during the administration of the mental health screening instrument under this section is not admissible against the child at any other hearing. The person administering the mental health screening instrument shall inform the child that any statement made by the child and any mental health data obtained from the child during the administration of the instrument is not admissible against the child at any other hearing.

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

Senator West offered the following committee amendment to the bill:

Committee Amendment No. 3

Amend **HB 1118** in SECTION 49 of the bill, in the second sentence of added Article 45.0216(c), Code of Criminal Procedure (House Engrossment, page 57, line 1), by striking "is not required to" and substituting "must".

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

Senator West offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 1118** by adding an appropriately numbered SECTION to read as follows:

SECTION _____. (a) The Prairie View A&M University Center for the Study and Prevention of Juvenile Crime and Delinquency shall study the relationship of the juvenile justice system to special categories of juveniles, including:

- (1) minorities,
- (2) female offenders, and
- (3) sex offenders.

(b) The Center shall cooperate with the Criminal Justice Policy Council, the Texas Juvenile Probation Commission and the Texas Youth Commission in conducting those studies.

(c) The Center shall report its findings and recommendations to the lieutenant governor, the speaker of the house of representatives, and the governor by December 1, 2002.

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

Senator Shapiro offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 1118** by adding the following new SECTION, to be numbered appropriately, to read as follows and renumbering subsequent SECTIONS appropriately:

SECTION _____. Section 53.045(a), Family Code, is amended to read as follows:

(a) Except as provided by Subsection (e), the prosecuting attorney may refer the petition to the grand jury of the county in which the court in which the petition is filed presides if the petition alleges that the child engaged in delinquent conduct that constitutes habitual felony conduct as described by Section 51.031 or that included the violation of any of the following provisions:

- (1) Section 19.02, Penal Code (murder);
- (2) Section 19.03, Penal Code (capital murder);
- (3) Section 19.04, Penal Code (manslaughter);
- (4) Section 20.04, Penal Code (aggravated kidnapping);
- (5) [~~4~~] Section 22.011, Penal Code (sexual assault) or Section 22.021, Penal Code (aggravated sexual assault);
- (6) [~~5~~] Section 22.02, Penal Code (aggravated assault);
- (7) [~~6~~] Section 29.03, Penal Code (aggravated robbery);
- (8) [~~7~~] Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual), if the offense is punishable as a felony, other than a state jail felony;
- (9) [~~8~~] Section 22.05(b), Penal Code (felony deadly conduct involving discharging a firearm);
- (10) [~~9~~] Subchapter D, Chapter 481, Health and Safety Code, if the conduct constitutes a felony of the first degree or an aggravated controlled substance felony (certain offenses involving controlled substances);
- (11) [~~10~~] Section 15.03, Penal Code (criminal solicitation);
- (12) [~~11~~] Section 21.11(a)(1), Penal Code (indecenty with a child);
- (13) [~~12~~] Section 15.031, Penal Code (criminal solicitation of a minor);
- (14) [~~13~~] Section 15.01, Penal Code (criminal attempt), if the offense attempted was an offense under Section 19.02, Penal Code (murder), or Section 19.03, Penal Code (capital murder), or an offense listed by Section 3g(a)(1), Article 42.12, Code of Criminal Procedure; [~~or~~]
- (15) [~~14~~] Section 28.02, Penal Code (arson), if bodily injury or death is suffered by any person by reason of the commission of the conduct; or
- (16) Section 49.08, Penal Code (intoxication manslaughter).

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

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

HB 1118 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1118 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 1118** 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.

MESSAGE FROM THE HOUSE**HOUSE CHAMBER**

Austin, Texas

May 18, 2001

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

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

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 273, In memory of Pauline DeBerry of Lufkin.

HCR 278, Congratulating the Texas Christian University Lady Frogs basketball team on winning their first Western Athletic Conference championship.

HCR 285, Honoring Robert S. "Bob" Driegert for his impressive record of service as chairman of the Dallas County Republican Party.

HCR 292, Declaring June 2001 to be "Falun Dafa Awareness Month" in Texas.

SB 342, Relating to the participation of the Texas Department of Transportation in the acquisition, construction, maintenance, and operation of toll facilities.
(Committee Substitute/Amended)

SB 484, Relating to the review of plans and specifications and the inspection of buildings or facilities for the purpose of eliminating architectural barriers encountered by persons with disabilities.
(Amended)

SB 730, Relating to the suspension of sentence and the deferral of adjudication in cases involving certain misdemeanor traffic offenses.
(Amended)

SCR 46, Honoring the 2001 Friendswood High School academic decathlon team for winning the state competition.

SCR 61, Supporting the selection of Lockheed Martin Aeronautics in Fort Worth as the site for the Joint Strike Fighter construction program.

SCR 63, Recognizing the American Combat Airman Hall of Fame as the official Combat Hall of Fame of the State of Texas.

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

(President in Chair)

**COMMITTEE SUBSTITUTE
HOUSE BILL 2879 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 2879, Relating to public school finance.

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

**COMMITTEE SUBSTITUTE
HOUSE BILL 2879 ON THIRD READING**

Senator Bivins moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2879** 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.

RECESS

The President at 1:10 p.m. announced the Senate would stand recessed until 1:45 p.m. today.

AFTER RECESS

The Senate met at 1:45 p.m. and was called to order by the President.

**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 today while the Senate was meeting.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2159 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:

CSHB 2159, Relating to premium rates and minimum reserves for credit life and accident and health insurance.

The bill was read second time.

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 2159** in SECTION 2 of the bill in amended Subdivision (2), Subsection A, Section 8, Article 3.53, Insurance Code, between "(5)" and "of this subsection" (Senate committee printing, page 3, line 5), by inserting "or (6)".

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

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

CSHB 2159 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Barrientos and Truan asked to be recorded as voting "Nay" on the passage of **CSHB 2159** to third reading.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2159 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 **CSHB 2159** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2, Present-not voting 1.

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

Nays: Barrientos, Truan.

Present-not voting: Mr. President.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 2, Present-not voting 1. (Same as previous roll call)

HOUSE BILL 3329 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 3329, Relating to tax-exempt private activity bonds.

The bill was read second time.

Senator Brown offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 3329** by adding the following:

1. Amend Subsection (b) of Subchapter B, Chapter 1372.022, Government Code, to read as follows:

(b) Prior to August 15 of each year through September 1, 2003:

- (1) 25 percent of the state ceiling is available exclusively for reservations by issuers of qualified mortgage bonds;
- (2) 11 percent of the state ceiling is available exclusively for reservations by issuers of state-voted issues;
- (3) 7.5 percent of the state ceiling is available exclusively for reservations by issuers of qualified small issue bonds and enterprise zone facility bonds;
- (4) 16.5 percent of the state ceiling is available exclusively for reservations by issuers of qualified residential rental projects bonds;
- (5) 10.5 percent of the state ceiling is available exclusively for reservations by issuers of qualified student loan bonds authorized by Section 53.47, Education Code; and
- (6) 29.5 percent of the state ceiling is available exclusively for reservations by any other issuer of bonds that require an allocation. The board shall issue 2 percent of the allocation based on a priority level for projects for the development of new drinking water sources.

2. The amendment of this section by any other act of the 77th Legislature, Regular Session does not take effect and this amendment takes effect regardless of the relative date of enactment.

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 bill:

Floor Amendment No. 1

Amend **HB 3329** by adding the following:

Amend Subsection (b) of Subchapter B, Chapter 1372.022, Government Code, to read as follows:

- (b) Prior to August 15 of each year through September 1, 2003:
 - (1) 25 percent of the state ceiling is available exclusively for reservations by issuers of qualified mortgage bonds;
 - (2) 11 percent of the state ceiling is available exclusively for reservations by issuers of state-voted issues;
 - (3) 7.5 percent of the state ceiling is available exclusively for reservations by issuers of qualified small issue bonds and enterprise zone facility bonds;
 - (4) 16.5 percent of the state ceiling is available exclusively for reservations by issuers of qualified residential rental projects bonds;
 - (5) 10.5 percent of the state ceiling is available exclusively for reservations by issuers of qualified student loan bonds authorized by section 53.47, Education Code; and
 - (6) 29.5 percent of the state ceiling is available exclusively for reservations by any other issuer of bonds that require an allocation. The board shall issue 2 percent of the allocation based on a priority level for projects for the development of new drinking water sources.

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 3329 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 3329 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 3329** 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 560 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 560, Relating to the liability of certain religious charitable organizations for transportation services provided to certain welfare recipients.

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

HOUSE BILL 560 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 560** be placed on its third reading and final passage.

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

Present-not voting: Mr. President.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

**COMMITTEE SUBSTITUTE
HOUSE BILL 1183 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:

CSHB 1183, Relating to the regulation of surgical assistants; granting rulemaking authority; providing an administrative penalty.

The bill was read second time.

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 1183** (senate committee printing) as follows:

(1) In SECTION 1 of the bill, strike proposed Subsection (a), Section 206.052, Occupations Code (page 2, lines 2 through 9), and substitute the following:

(a) The advisory committee consists of six members appointed by the president of the medical board. One member must be a registered perioperative nurse with at least five years of clinical experience as a registered perioperative nurse. Each of the remaining members must be:

(1) a practicing surgical assistant who has at least five years of clinical experience as a surgical assistant; or

(2) a physician licensed in this state who supervises a surgical assistant.

(2) In SECTION 1 of the bill, in proposed Subsection (b)(2), Section 206.205, Occupations Code (page 6, line 30), strike "after" and substitute "since".

(3) Between SECTION 5 and 6 of the bill (page 15, between lines 2 and 3), insert the following appropriately numbered section:

SECTION _____. Section 32.027, Human Resources Code, is amended by adding Subsection (j) to read as follows:

(j) The department shall assure that a recipient of medical assistance under this chapter may select a surgical assistant licensed under Chapter 206, Occupations Code, to perform any health care service or procedure covered under the medical assistance program if:

(1) the selected surgical assistant is authorized by law to perform the service or procedure; and

(2) the physician requests that the service or procedure be performed by the surgical assistant.

(4) Renumber the sections of the bill appropriately.

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

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

CSHB 1183 as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1183 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 **CSHB 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.

HOUSE CONCURRENT RESOLUTION 104 ON SECOND READING

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

HCR 104, Memorializing congress to pass legislation relating to giving a tax credit for jury service.

The resolution was read second time and was adopted by a viva voce vote.

HOUSE BILL 3678 ON SECOND READING

On motion of Senator Jackson 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 3678, Relating to the creation of an additional statutory county court in Galveston County and to the administration, operation, and jurisdiction of the statutory courts in that county.

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

HOUSE BILL 3678 ON THIRD READING

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3678** 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.

**VOTES RECONSIDERED ON
HOUSE BILL 299**

On motion of Senator Shapleigh and by unanimous consent, the vote by which **HB 299** was passed to third reading was reconsidered:

HB 299, Relating to speed limits on state highways.

Question—Shall **HB 299** be passed to third reading?

On motion of Senator Shapleigh and by unanimous consent, the vote by which Floor Amendment No. 1 to **HB 299** was adopted was reconsidered.

Question—Shall Floor Amendment No. 1 to **HB 299** be adopted?

On motion of Senator Ogden and by unanimous consent, Floor Amendment No. 1 was withdrawn.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 3

Amend **HB 299** as follows:

(1) On page 1, strike lines 10-12 and substitute the following:
"SECTION 1. Section 545.353, Transportation Code, is amended by amending Subsection (d) and by adding Subsection (h) and (i) to read as follows:".

(2) In SECTION 1, add a new Subsection (i) to read as follows:

"(i) The speed limit authorized by Subsection (h) does not apply to:

- (1) trucks, other than light trucks and light trucks pulling a trailer; and
- (2) truck tractors, trailers, and semitrailers."

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

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

HB 299 as again amended was again passed to third reading by a viva voce vote.

HOUSE BILL 299 ON THIRD READING

On motion of Senator Shapleigh 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.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 2, Present-not voting 1.

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

Nays: Barrientos, Harris.

Present-not voting: Mr. President.

**SENATE RULE 5.14(a) SUSPENDED
(Intent Calendar)**

On motion of Senator Armbrister and by unanimous consent, Senate Rule 5.14(a), requiring bills to be posted on the Intent Calendar by 4:00 p.m., was suspended and the time was extended to 6:00 p.m. today for the Monday, May 21, 2001, Intent Calendar.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
May 18, 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:

SB 317, Relating to continuation and functions of the Office of Consumer Credit Commissioner and the regulation of certain financial businesses.
(Committee Substitute/Amended)

SB 510, Relating to the procurement methods a political subdivision or a related entity may use.
(Committee Substitute/Amended)

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

HB 7 (viva-voce vote)

HB 651 (viva-voce vote)

HB 689 (viva-voce vote)
HB 1027 (viva-voce vote)
HB 1415 (viva-voce vote)
HB 2255 (viva-voce vote)
HB 2677 (viva-voce vote)

THE HOUSE HAS REFUSED TO CONCUR IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

HB 1094

House Conferees: Gray - Chair/Coleman/Janek/Junell/Keffer

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

HOUSE BILL 2600 ON SECOND READING

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

HB 2600, Relating to the provision of workers' compensation benefits and to the operation of the workers' compensation insurance system; providing penalties.

There was objection.

Senator Duncan then moved to suspend the regular order of business and take up **HB 2600** for consideration at this time.

The motion prevailed by the following vote: Yeas 25, Nays 5, Present-not voting 1.

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

Nays: Gallegos, Lucio, Madla, Truan, Van de Putte.

Present-not voting: Mr. President.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2600** by striking all below the enacting clause and substituting the following:

ARTICLE 1. APPROVED DOCTORS;
MEDICAL REVIEW

SECTION 1.01. Subchapter B, Chapter 408, Labor Code, is amended by amending Section 408.023 and adding Section 408.0231 to read as follows:

Sec. 408.023. LIST OF APPROVED DOCTORS; DUTIES OF TREATING DOCTORS. (a) The commission shall develop a list of doctors licensed in this state

who are approved to provide health care services under this subtitle. Each doctor licensed in this state on September 1, 2001 [~~January 1, 1993~~], is eligible to be included on the commission's list of approved doctors if the doctor:

(1) registers with the commission in the manner prescribed by commission rules; and

(2) complies with the requirements adopted by the commission under this section.

(b) The commission by rule shall establish reasonable requirements for doctors and health care providers financially related to those doctors regarding training, impairment rating testing, and disclosure of financial interests as required by Section 413.041, and for monitoring of those doctors and health care providers as provided by Sections 408.0231 and 413.0512. The commission by rule shall provide a reasonable period, not to exceed 18 months after the adoption of rules under this section, for doctors to comply with the registration and training requirements of this subchapter. Except as otherwise provided by this section, the requirements under this subsection apply to doctors and other health care providers who:

(1) provide health care services as treating doctors;

(2) provide health care services as authorized by this chapter;

(3) perform medical peer review under this subtitle;

(4) perform utilization review of medical benefits provided under this subtitle; or

(5) provide health care services on referral from a treating doctor, as provided by commission rule.

(c) The commission shall issue to a doctor who is approved by the commission a certificate of registration. In determining whether to issue a certificate of registration, the commission may consider and condition its approval on any practice restrictions applicable to the applicant that are relevant to services provided under this subtitle. The commission may also consider the practice restrictions of an applicant when determining appropriate sanctions under Section 408.0231.

(d) A certificate of registration issued under this section is valid, unless revoked, suspended, or revised, for the period provided by commission rule and may be renewed on application to the commission. The commission shall provide notice to each doctor on the approved doctor list of the pending expiration of the doctor's certificate of registration not later than the 60th day before the date of expiration of the certificate [~~unless subsequently deleted and not reinstated. The name of a doctor shall be placed on the list of approved doctors when that doctor becomes licensed in this state~~].

(e) Notwithstanding other provisions of this section, a [~~A~~] doctor not licensed in this state but licensed in another state or jurisdiction who treats employees or performs utilization review of health care for an insurance carrier may apply for a certificate of registration under this section [~~to the commission~~] to be included on the commission's list of approved doctors.

(f) Except in an emergency or for immediate post-injury medical care as defined by commission rule, or as provided by Subsection (h) or (i), each doctor who performs functions under this subtitle, including examinations under this chapter, must hold a certificate of registration and be on the list of approved doctors in order to perform services or receive payment for those services.

(g) The commission by rule shall modify registration and training requirements for doctors who infrequently provide health care, who perform utilization review or peer review functions for insurance carriers, or who participate in regional networks established under this subchapter, as necessary to ensure that those doctors are informed of the regulations that affect health care benefit delivery under this subtitle.

(h) Notwithstanding Section 4(h), Article 21.58A, Insurance Code, a utilization review agent that uses doctors to perform reviews of health care services provided under this subtitle may use doctors licensed by another state to perform the reviews, but the reviews must be performed under the direction of a doctor licensed to practice in this state.

(i) The commission may grant exceptions to the requirement imposed under Subsection (f) as necessary to ensure that:

(1) employees have access to health care; and

(2) insurance carriers have access to evaluations of an employee's health care and income benefit eligibility as provided by this subtitle.

(j) The injured employee's treating doctor is responsible for the efficient management of medical care as required by Section 408.025(c) and commission rules. The commission shall collect information regarding:

(1) return-to-work outcomes;

(2) patient satisfaction; and

(3) cost and utilization of health care provided or authorized by a treating doctor on the list of approved doctors.

(k) The commission may adopt rules to define the role of the treating doctor and to specify outcome information to be collected for a treating doctor.

Sec. 408.0231. MAINTENANCE OF LIST OF APPROVED DOCTORS; SANCTIONS AND PRIVILEGES RELATING TO HEALTH CARE. (a) The executive director shall delete from the list of approved doctors a doctor:

(1) who fails to register with the commission as provided by this chapter and commission rules;

(2) who is deceased;

(3) whose license to practice in this state is revoked, suspended, or not renewed by the appropriate licensing authority; or

(4) who requests to be removed from the list.

(b) The commission by rule shall establish criteria for:

(1) deleting or suspending a doctor from the list of approved doctors;

(2) imposing sanctions on a doctor or an insurance carrier as provided by this section;

(3) monitoring of utilization review agents, as provided by a memorandum of understanding between the commission and the Texas Department of Insurance; and

(4) authorizing increased or reduced utilization review and preauthorization controls on a doctor.

(c) Rules adopted under Subsection (b) are in addition to, and do not affect, the rules adopted under Section 415.023(b). The criteria for deleting a doctor from the list or for recommending or imposing sanctions may include anything the commission considers relevant, including:

(1) a sanction [sanctions] of the doctor by the commission for a violation [violations] of Chapter 413 or Chapter 415;

(2) a sanction [sanctions] by the Medicare or Medicaid program for:

(A) substandard medical care;

(B) overcharging; [or]

(C) overutilization of medical services; or

(D) any other substantive noncompliance with requirements of those programs regarding professional practice or billing;

(3) evidence from the commission's medical records that the applicable insurance carrier's utilization review practices or the doctor's charges, fees, diagnoses, [or] treatments, evaluations, or impairment ratings are substantially different from those the commission finds to be fair and reasonable based on either a single determination or a pattern of practice; [and]

(4) a suspension or other relevant practice restriction of the doctor's license by an [the] appropriate licensing authority;

(5) professional failure to practice medicine or provide health care, including chiropractic care, in an acceptable manner consistent with the public health, safety, and welfare;

(6) findings of fact and conclusions of law made by a court, an administrative law judge of the State Office of Administrative Hearings, or a licensing or regulatory authority; or

(7) a criminal conviction.

(d) [re] The commission by rule shall establish procedures under which [for] a doctor may [to] apply for:

(1) reinstatement to the list of approved doctors; or

(2) restoration of doctor practice privileges removed by the commission based on sanctions imposed under this section.

(e) The commission shall act on a recommendation by the medical advisor selected under Section 413.0511 and, after notice and the opportunity for a hearing, may impose sanctions under this section on a doctor or an insurance carrier or may recommend action regarding a utilization review agent. The commission and the Texas Department of Insurance shall enter into a memorandum of understanding to coordinate the regulation of insurance carriers and utilization review agents as necessary to ensure:

(1) compliance with applicable regulations; and

(2) that appropriate health care decisions are reached under this subtitle and under Article 21.58A, Insurance Code.

(f) The sanctions the commission may recommend or impose under this section include:

(1) reduction of allowable reimbursement;

(2) mandatory preauthorization of all or certain health care services;

(3) required peer review monitoring, reporting, and audit;

(4) deletion or suspension from the approved doctor list and the designated doctor list;

(5) restrictions on appointment under this chapter;

(6) conditions or restrictions on an insurance carrier regarding actions by insurance carriers under this subtitle in accordance with the memorandum of understanding adopted between the commission and the Texas Department of Insurance regarding Article 21.58A, Insurance Code; and

(7) mandatory participation in training classes or other courses as established or certified by the commission.

SECTION 1.02. Subchapter E, Chapter 413, Labor Code, is amended by amending Section 413.051 and adding Sections 413.0511, 413.0512, and 413.0513 to read as follows:

Sec. 413.051. **CONTRACTS WITH REVIEW ORGANIZATIONS AND HEALTH CARE PROVIDERS.** (a) The commission may contract with a health care provider, health care provider professional review organization, or other entity to develop, maintain, or review medical policies or fee guidelines or to review compliance with the medical policies or fee guidelines.

(b) For purposes of review or resolution of a dispute as to compliance with the medical policies or fee guidelines, the commission may contract [~~only~~] with a health care provider, health care provider professional review organization, or other entity that includes in the review process health care practitioners who are licensed in the category under review and are of the same field or specialty as the category under review.

(c) The commission may contract with a health care provider, health care provider professional review organization, or other entity for medical consultant services, including:

- (1) independent medical examinations;
- (2) medical case reviews; or
- (3) establishment of medical policies and fee guidelines.

(d) The commission shall establish standards for contracts under this section.

(e) For purposes of this section, "health care provider professional review organization" includes an independent review organization.

Sec. 413.0511. **MEDICAL ADVISOR.** (a) The commission shall employ or contract with a medical advisor, who must be a doctor as that term is defined by Section 401.011.

(b) The medical advisor shall make recommendations regarding the adoption of rules to:

(1) develop, maintain, and review guidelines as provided by Section 413.011, including rules regarding impairment ratings;

(2) review compliance with those guidelines;

(3) regulate or perform other acts related to medical benefits as required by the commission;

(4) impose sanctions or delete doctors from the commission's list of approved doctors under Section 408.023 for:

(A) any reason described by Section 408.0231; or

(B) noncompliance with commission rules;

(5) impose conditions or restrictions as authorized by Section 408.0231(f);

(6) receive, and share with the medical quality review panel established under Section 413.0512, confidential information from the Texas State Board of Medical Examiners, the Texas Board of Chiropractic Examiners, or other

occupational licensing boards regarding disciplinary actions imposed on a physician, chiropractor, or other type of doctor who applies for registration or is registered with the commission on the list of approved doctors; and

(7) determine minimal modifications to the reimbursement methodology and model used by the Medicare system as necessary to meet occupational injury requirements.

Sec. 413.0512. MEDICAL QUALITY REVIEW PANEL. (a) The medical advisor shall establish a medical quality review panel of health care providers to assist the medical advisor in performing the duties required under Section 413.0511. The panel is independent of the medical advisory committee created under Section 413.005 and is not subject to Chapter 2110, Government Code.

(b) The Texas State Board of Medical Examiners and the Texas Board of Chiropractic Examiners, with input from their respective professional associations, shall develop lists of physicians and chiropractors licensed by those agencies who have demonstrated experience in workers' compensation or utilization review. The medical advisor shall consider appointing some of the members of the medical quality review panel from the names on those lists. The medical advisor shall also consider nominations for the panel made by labor, business, and insurance organizations.

(c) The medical quality review panel shall recommend to the medical advisor:

(1) appropriate action regarding doctors, other health care providers, insurance carriers, and utilization review agents; and

(2) the addition or deletion of doctors from the list of approved doctors under Section 408.023 or the list of designated doctors established under Section 408.122.

(d) A person who serves on the medical quality review panel is not liable in a civil action for an act performed in good faith as a member of the panel and is entitled to the same protections afforded a commission member under Section 402.010.

(e) The actions of a person serving on the medical quality review panel do not constitute utilization review and are not subject to Article 21.58A, Insurance Code.

Sec. 413.0513. CONFIDENTIALITY REQUIREMENTS. (a) Information maintained by or on behalf of the commission under Section 413.0511 or 413.0512, and that is confidential under law, may not be disclosed under Section 413.0511 or 413.0512 except:

(1) in a criminal proceeding;

(2) in a hearing conducted by or on behalf of the commission;

(3) in a hearing conducted by another licensing or regulatory authority, as provided in the interagency agreement; or

(4) on a finding of good cause in an administrative or judicial proceeding involving the enforcement of this subtitle or in a disciplinary action under this subtitle.

(b) Confidential information developed by or on behalf of the commission under Section 413.0512 is not subject to discovery or court subpoena in any action other than:

(1) an action to enforce this subtitle brought by the commission, an appropriate licensing or regulatory agency, or an appropriate enforcement authority; or

(2) a criminal proceeding.

SECTION 1.03. (a) The Texas Workers' Compensation Commission shall adopt rules as required by Chapter 408, Labor Code, as amended by this article, not later than February 1, 2002.

(b) A doctor is not required to hold a certificate of registration issued under Section 408.023, Labor Code, as amended by this article, to perform medical services under Subtitle A, Title 5, Labor Code, before the date provided by commission rules adopted to implement that section.

ARTICLE 2. MEDICAL NETWORK
PARTICIPATION OPTION

SECTION 2.01. Subchapter B, Chapter 408, Labor Code, is amended by adding Sections 408.0221, 408.0222, and 408.0223 to read as follows:

Sec. 408.0221. REGIONAL HEALTH CARE DELIVERY NETWORKS; ADVISORY COMMITTEE. (a) In this section:

(1) "Advisory committee" means the Health Care Network Advisory Committee.

(2) "Regional network" means a regional workers' compensation health care delivery network established by the commission under this section.

(b) The regional networks established under this section shall be fee-for-service networks designed to improve the quality and reduce the cost of health care, with active health care management and monitoring and a full range of health care services under contract as considered feasible under the feasibility study required under Subsection (d).

(c) The Health Care Network Advisory Committee is established to advise the commission on the implementation of this section and Section 408.0222. Members of the advisory committee are appointed by the governor for staggered two-year terms, with the membership as follows:

(1) three employee representatives recommended by a recognized statewide labor federation;

(2) three employer representatives;

(3) three ex officio insurance carrier representatives, with one member representing state agencies, one member representing the Texas Workers' Compensation Insurance Fund, and one member representing a voluntary market insurance carrier;

(4) three ex officio health care provider representatives; and

(5) the commission's medical advisor, who shall serve as chair of the advisory committee.

(d) The commission, on behalf of the advisory committee established under this section, shall establish and, through competitive procurement, contract with regional networks for the provision of health care under this subtitle. The commission shall, through competitive procurement, contract with one or more entities to determine the feasibility of, develop, and evaluate the regional networks established under this section. Those entities shall also recommend to the advisory committee appropriate network standards and application requirements and assist the advisory committee during the procurement process.

(e) The advisory committee shall make recommendations to the commission regarding:

(1) the development of the standards by which health care services are provided through regional networks;

(2) regional network application requirements and fees;

(3) contract proposals;

(4) the feasibility of establishing one or more regional networks using a phased implementation and evaluation process;

(5) the use of consultants as necessary to assist the commission in the procurement of regional network contracts; and

(6) the selection of administrators to build and manage the regional networks and to report on their progress.

(f) The advisory committee shall gather information from other entities, including the Research and Oversight Council on Workers' Compensation, the Texas Health Care Information Council, the Texas Department of Insurance, the Texas Department of Health, and the Employees Retirement System of Texas.

(g) The standards adopted for preferred provider networks under Article 3.70-3C, Insurance Code, as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997, apply as minimum standards for regional health care delivery networks created under this section and are adopted by reference in this section except to the extent they are inconsistent with this subtitle. The advisory committee may also recommend additional standards, including standards that require:

(1) for each geographic region, access to an adequate number of health care providers and treating doctors in each appropriate health care discipline and the professional specialties within those disciplines and a viable network through:

(A) the use of economic profiling as described by Article 3.70-3C, Insurance Code, as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997; and

(B) limitations on the number of providers, as provided by that article;

(2) the ability of an employee to receive treatment by a regional network provider within a reasonable amount of time of the regional network's knowledge of the need or request for treatment and within a reasonable travel distance for the employee;

(3) a reasonable effort by the regional network to attract health care providers who reflect the ethnic and cultural background of the regional employee population;

(4) the availability of board-certified occupational medicine specialists to provide expertise on disability management and prevention and treatment of occupational injuries and illnesses;

(5) accreditation of the regional networks or a commitment to seek accreditation from a nationally recognized organization such as the American Accreditation HealthCare Commission or the National Committee for Quality Assurance;

(6) the use of strict credentialing criteria by regional networks in the selection and deselection of its health care providers, including verification that the provider:

(A) is on the commission's list of approved doctors, if the provider is required to be on that list;

(B) has not, at the time of selection or deselection, been sanctioned or made subject to additional utilization review requirements by the commission;

(C) is not, at the time of selection or deselection, subject to sanctions or substantive practice restrictions imposed by the provider's licensing authority;

(D) has or is able to obtain practice privileges, if required, at a participating hospital; and

(E) is covered by professional liability insurance coverage as required by the regional network contract;

(7) satisfactory evidence of the regional network's ability to comply with any financial requirements and ensure delivery of services;

(8) compliance with ongoing training and educational requirements established by the commission;

(9) the use of nationally recognized, scientifically valid, and outcome-based treatment standards as guidelines for health care;

(10) disclosure of the availability of interpreter services as appropriate for the evaluation and treatment of employees;

(11) timely and accurate reporting of data to appropriately manage and determine the effectiveness of the regional network in reducing medical costs and ensuring quality of care;

(12) a process for reconsideration of medical necessity denials and dispute resolution within the regional network; and

(13) a process for reviewing requests for a change in treating doctors made under Section 408.0222(s).

(h) The advisory committee and the Research and Oversight Council on Workers' Compensation shall develop evaluation standards and specifications as necessary to implement a regional network report card. The commission shall ensure that the report card is published and available for inspection. The commission may procure services as necessary to produce the report card. The report card, at a minimum, must be based on contracted reviews and must include a risk-adjusted evaluation of:

(1) employee access to care;

(2) coordination of care and return to work;

(3) communication among system participants;

(4) return-to-work outcomes;

(5) health-related outcomes;

(6) employee, health care provider, employer, and insurance carrier satisfaction;

(7) disability and re-injury prevention;

(8) appropriate clinical care;

(9) health care costs;

(10) utilization of health care; and

(11) statistical outcomes of medical dispute resolution provided by independent review organizations.

(i) The regional network administrators shall report quarterly to the commission and the advisory committee on the progress of implementing the regional networks and shall submit consolidated annual reports. The Research and Oversight Council on Workers' Compensation shall report to the legislature by January 1 of each odd-numbered year on the status of the implementation of regional networks under this section.

(j) The commission shall ensure that regional network contracts provide that insurance carriers have reasonable rights to conduct audits under this subsection. Insurance carriers participating in the regional network shall be allowed the opportunity for consolidated audits of the regional networks.

(k) The cost of assessing the feasibility of, developing, and evaluating the regional networks created under this section shall be funded through an assessment on the subsequent injury fund established under Section 403.006. This cost may not

exceed a total of \$1.5 million for the regional networks. The cost of ongoing regional network administration and management services shall be included in the fees for health care services paid by insurance carriers participating in the regional network.

Sec. 408.0222. PARTICIPATION IN REGIONAL NETWORK; SELECTION OF DOCTOR WITHIN REGIONAL NETWORK; BENEFIT INCENTIVES. (a) An insurance carrier or a self-insurer certified to provide workers' compensation coverage in this state may elect to participate or not participate, by contract, in a regional network established under Section 408.0221. A public employer covered under Subtitle C of this title, other than an employer covered under Chapter 504, is required to participate in a regional network established under Section 408.0221. An insurance carrier who elects to participate in regional networks agrees to abide by the terms of the regional network contracts between the commission and the regional networks.

(b) An insurance carrier may limit its election to participate in a regional network established under Section 408.0221 to a particular employer or a particular region of this state. This subsection expires January 1, 2006.

(c) A health care provider participating in a regional network established under Section 408.0221 may perform only those procedures that are within the scope of the practice for which the health care provider is licensed.

(d) An employee may elect to participate or not participate in a regional network established under Section 408.0221. Only an employee covered by an insurance carrier who has elected to participate in a regional network established under Section 408.0221 may elect to participate in that regional network. An eligible employee may elect to participate or not participate in the regional network for each compensable injury sustained by the employee. Except as provided by this section, the employee's election to participate in the network is effective for all medical care related to that injury. The advisory committee shall make recommendations and the commission, by rule, shall establish:

(1) the form and manner by which an employee:

(A) receives notice of the employee's rights; or

(B) documents the employee's election or rescission of a prior election;

(2) the timing and recovery of a payment of enhanced benefits; and

(3) other related issues.

(e) Except as provided by Subsection (f), an employee shall make the election described by this section during an employer-designated enrollment period or at the time of employment. An employee who has elected to participate in the network may rescind that election at any time before the earlier of:

(1) the date on which the employee begins to receive enhanced income benefits under Subsection (m); or

(2) the 14th day after the date on which the employee receives health care from a network health care provider.

(f) An employee may elect to participate in a regional network established under Section 408.0221 at any time with the insurance carrier's agreement. An employee is not bound by an election to participate in a regional network made under Subsection (d) or this subsection if:

(1) the insurance carrier waives the election;

(2) the commission invalidates the election based on a determination of coercion;

(3) the employee relocates to an area outside of the regional network's service area, and the regional network is not able to identify alternate network providers to provide health care services reasonable for the employee's medical condition; or

(4) notwithstanding Subsection (n), the commission sets aside the employee's election based on a finding that:

(A) the worker was bound by an election to participate in the network;

(B) the carrier disputes the compensability of the employee's injury; and

(C) network health care providers are unwilling to provide health care to the employee pending the resolution of the dispute.

(g) An insurance carrier who elects to participate in a regional network established under Section 408.0221 shall provide each employer who obtains coverage through the insurance carrier with adequate information about the regional network to share with the employer's employees. Before an employee makes an election under this section to participate in a regional network, the employer shall provide the employee with:

(1) a complete, plain-language description of the regional network's services, restrictions, and benefits, including a description of the enhanced income benefits that may be due; and

(2) access to the most recent:

(A) list of doctors available through the regional network; and

(B) regional network report card developed under Section 408.0221.

(h) An employer shall not discharge, subject to disciplinary action, or take an adverse employment action against an employee who elects not to participate in a regional network created under Section 408.0221 if the employer's action would not have occurred in the absence of the employee's election not to participate.

(i) An employee may bring suit against an employer for violation of Subsection (h) if:

(1) the employee gives written notice of intent to bring suit to the employer within 60 days of the alleged violation; and

(2) the employer does not reinstate the employee and pay actual wages lost and reasonable attorney's fees incurred due to the employer's action within 60 days of notification of the employee's intent to bring suit.

(j) The employee must bring suit for an employer's violation of Subsection (h) within 120 days of the alleged violation. A suit under this section may be brought in the county in which:

(1) the plaintiff resides;

(2) the plaintiff was employed; or

(3) the defendant's primary place of business is located.

(k) If the employee prevails in an action under Subsection (i), the employee may recover:

(1) lost wages;

(2) reinstatement of front pay as equitable relief in lieu of reinstatement;

(3) reasonable attorney's fees; and

(4) court costs.

(l) A suit under this section is the exclusive remedy for violation of Subsection (h), and the provisions of Chapter 451 do not apply to such a violation. Parties may not maintain an action under Rule 42, Texas Rules of Civil Procedure.

(m) An employee who elects to participate in a regional network created under Section 408.0221 shall receive:

(1) notwithstanding Section 408.082(c), income benefits from the date disability begins if the disability lasts two weeks or longer; and

(2) notwithstanding Section 408.061, an increased maximum weekly benefit of up to 150 percent of the state average weekly wage for temporary income benefits.

(n) Except for emergency care, or as otherwise provided by this section, an employee who elects to participate in a regional network shall receive medical treatment, including referrals, from health care providers within the regional network. An employee or an employee's treating doctor may use a health care provider outside of the regional network with the approval of the regional network for good cause consistent with the regional network contract. If medically necessary services are not available through regional network health care providers, the regional network must, on the request of a regional network health care provider, within a reasonable time allow a referral to a nonregional network health care provider and shall fully reimburse the nonregional network physician or provider at the rate provided by the commission fee guidelines or an agreed rate. For purposes of this subsection, "emergency care" has the meaning assigned by Section 2(g), Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code).

(o) A health care provider who participates in a regional network created under Section 408.0221 shall be reimbursed and be subject to utilization review as provided by the regional network contract. The insurance carrier is responsible for payment of regional network providers as provided by the contract with the regional network. A non-network provider who does not obtain the approval of the regional network to provide services may not be reimbursed by the insurance carrier, unless the provider requested and received verification from the insurance carrier that the employee was not bound by a network election under Subsection (e).

(p) To resolve an issue regarding the necessity or the appropriateness of care, or referrals to nonregional network physicians or providers, an employee or an employee's treating doctor may request a review by an independent review organization under Section 413.031(d).

(q) An employee who elects to participate in a regional network established under Section 408.0221 shall select an initial treating doctor within the regional network as provided by the regional network contract. An employee who requests to change treating doctors within the regional network is not subject to Section 408.022. At the sole discretion of the regional network, an employee may select a treating doctor outside of the regional network if:

(1) the employee has a preexisting relationship with a doctor who maintains the employee's medical records and has a documented history of treatment before the date of injury; and

(2) that doctor agrees in writing to abide by the rules, terms, and conditions of the regional network contract, including an agreement to refer the employee within the regional network for services available through the regional network.

(r) An employee is subject to the selection of doctor, change of doctor, and other medical benefit and income benefit requirements established under this chapter and Chapter 413 if an employee:

(1) elects not to participate in a regional network established under Section 408.0221; or

(2) is employed by an employer for whom the insurance carrier has not elected to participate in a regional network established under Section 408.0221.

(s) An employee may change treating doctors within the regional network established under Section 408.0221 in which the employee is participating in accordance with the regional network contract and is entitled to:

(1) make one change from the initial treating doctor to an alternate treating doctor within the regional network unless the change is for the purpose of securing a new impairment rating or new determination of maximum medical improvement; and

(2) request additional changes of the treating doctor in the manner provided by the regional network contract.

(t) An employee or insurance carrier may request that the commission order an examination under Section 408.0041 if an employee has received conflicting impairment ratings or determinations of maximum medical improvement from more than one treating doctor.

(u) For purposes of this section, the following is not a selection of an alternate doctor in a regional network established under Section 408.0221:

(1) a referral made by the doctor chosen by the employee if the referral is medically reasonable and necessary;

(2) the receipt of services ancillary to surgery;

(3) the obtaining of a second opinion only on the appropriateness of the diagnosis or treatment;

(4) the selection of a doctor because the original doctor:

(A) dies;

(B) retires; or

(C) becomes unavailable or unable to provide medical care to the employee; or

(5) a change of doctor required because of a change of residence by the employee.

Sec. 408.0223. INSURANCE CARRIER NETWORKS. (a) In this section, "insurance carrier network" means a voluntary workers' compensation health care delivery network established by an insurance carrier. The term does not include a regional network established under Section 408.0221.

(b) This subtitle does not prohibit an insurance carrier, whether doing business as an individual carrier or as a group, from participating in or maintaining voluntary insurance carrier networks if those voluntary insurance carrier networks allow selection of doctors as provided by Section 408.022.

(c) This subtitle does not prohibit an insurance carrier from concurrently participating in an insurance carrier network and a regional network established under Section 408.0221.

SECTION 2.02. (a) The Texas Workers' Compensation Commission shall adopt rules as required by Chapter 408, Labor Code, as amended by this article, not later than October 1, 2002.

(b) The Texas Workers' Compensation Commission shall convene the first meeting of the Health Care Network Advisory Committee established under Section 408.0221, Labor Code, as added by this article, not later than October 1, 2001.

(c) Unless determined to be unfeasible, the Texas Workers' Compensation Commission shall contract for regional workers' compensation health care delivery networks under Section 408.0221, Labor Code, as added by this article, not later than December 31, 2002.

(d) Section 408.0222, Labor Code, as added by this article, as that section affects workers' compensation benefits an employee may receive for participating in a regional network under Section 408.0221, Labor Code, as added by this article, takes effect on the certification by the Texas Workers' Compensation Commission that the regional network is operational.

ARTICLE 3. RETURN-TO-WORK REPORTING AND SERVICES

SECTION 3.01. Section 409.005, Labor Code, is amended to read as follows:

Sec. 409.005. REPORT OF INJURY; MODIFIED DUTY PROGRAM NOTICE; ADMINISTRATIVE VIOLATION. (a) An employer shall report to the employer's insurance carrier if:

(1) an injury results in the absence of an employee of that employer from work for more than one day; or

(2) an employee of the employer notifies that employer of an occupational disease under Section 409.001.

(b) The report under Subsection (a) must be made not later than the eighth day after:

(1) the employee's absence from work for more than one day due to an injury; or

(2) the day on which the employer receives notice under Section 409.001 that the employee has contracted an occupational disease.

(c) The employer shall deliver a written copy of the report under Subsection (a) to the injured employee at the time that the report is made to the insurance carrier.

(d) The insurance carrier shall file the report of the injury on behalf of the policyholder. Except as provided by Subsection (e), the insurance carrier must electronically file the report with the commission not later than the seventh day after the date on which the carrier receives the report from the employer.

(e) The executive director may waive the electronic filing requirement under Subsection (d) and allow an insurance carrier to mail or deliver the report to the commission not later than the seventh day after the date on which the carrier receives the report from the employer.

(f) A report required under this section may not be considered to be an admission by or evidence against an employer or an insurance carrier in a proceeding before the commission or a court in which the facts set out in the report are contradicted by the employer or insurance carrier.

(g) In addition to any information required under Subsection (h), the report provided to the injured employee under Subsection (c) must contain a summary written in plain language of the employee's statutory rights and responsibilities under this subtitle.

(h) The commission may adopt rules relating to:

(1) the information that must be contained in a report required under this section, including the summary of rights and responsibilities required under Subsection (g); and

(2) the development and implementation of an electronic filing system for injury reports under this section.

(i) An employer and insurance carrier shall file subsequent reports as required by commission rule.

(j) The employer shall, on the written request of the employee, a doctor, the insurance carrier, or the commission, notify the employee, the employee's treating doctor if known to the employer, and the insurance carrier of the existence or absence of opportunities for modified duty or a modified duty return-to-work program available through the employer. If those opportunities or that program exists, the employer shall identify the employer's contact person and provide other information to assist the doctor, the employee, and the insurance carrier to assess modified duty or return-to-work options.

(k) This section does not prohibit the commission from imposing requirements relating to return-to-work under other authority granted to the commission in this subtitle.

(l) A person commits a violation if the person fails to comply with this section unless good cause exists. A violation under this subsection is a Class D administrative violation.

SECTION 3.02. Subchapter B, Chapter 413, Labor Code, is amended by adding Section 413.021 to read as follows:

Sec. 413.021. RETURN-TO-WORK COORDINATION SERVICES. (a) An insurance carrier shall, with the agreement of a participating employer, provide the employer with return-to-work coordination services as necessary to facilitate an employee's return to employment. The insurance carrier shall notify the employer of the availability of return-to-work coordination services. In offering the services, insurance carriers and the commission shall target employers without return-to-work programs and shall focus return-to-work efforts on workers who begin to receive temporary income benefits. These services may be offered by insurance carriers in conjunction with the accident prevention services provided under Section 411.061. Nothing in this section supersedes the provisions of a collective bargaining agreement between an employer and the employer's employees, and nothing in this section authorizes or requires an employer to engage in conduct that would otherwise be a violation of the employer's obligations under the National Labor Relations Act (29 U.S.C. Section 151 et seq.), and its subsequent amendments.

(b) Return-to-work coordination services under this section may include:

(1) job analysis to identify the physical demands of a job;

(2) job modification and restructuring assessments as necessary to match job requirements with the functional capacity of an employee; and

(3) medical or vocational case management to coordinate the efforts of the employer, the treating doctor, and the injured employee to achieve timely return to work.

(c) An insurance carrier is not required to provide physical workplace modifications under this section and is not liable for the cost of modifications made under this section to facilitate an employee's return to employment.

(d) The commission shall use certified rehabilitation counselors or other appropriately trained or credentialed specialists to provide training to commission staff regarding the coordination of return-to-work services under this section.

(e) The commission shall adopt rules necessary to collect data on return-to-work outcomes to allow full evaluations of successes and of barriers to achieving timely return to work after an injury.

(f) The commission shall report twice annually to the Research and Oversight Council on Workers' Compensation regarding the implementation and outcome of the return-to-work initiatives required by this section.

SECTION 3.03. The Texas Workers' Compensation Commission may adopt rules as necessary to implement Sections 409.005(j) and 413.021, Labor Code, as added by this article, not earlier than January 1, 2004.

ARTICLE 4. PREAUTHORIZATION, CONCURRENT REVIEW,
AND CERTIFICATION REQUIREMENTS

SECTION 4.01. Section 408.026, Labor Code, is amended to read as follows:

Sec. 408.026. SPINAL SURGERY [~~SECOND OPINION~~]. ~~[(a)]~~ Except in a medical emergency, an insurance carrier is liable for medical costs related to spinal surgery only as provided by Section 413.014 and commission rules ~~if:~~

~~[(1) before surgery, the employee obtains from a doctor approved by the insurance carrier or the commission a second opinion that concurs with the treating doctor's recommendation;~~

~~[(2) the insurance carrier waives the right to an examination or fails to request an examination before the 15th day after the date of the notification that surgery is recommended; or~~

~~[(3) the commission determines that extenuating circumstances exist and orders payment for surgery].~~

~~[(b) The commission shall adopt rules necessary to ensure that an examination required under this section is performed without undue delay.]~~

SECTION 4.02. Section 413.014, Labor Code, is amended to read as follows:

Sec. 413.014. PREAUTHORIZATION REQUIREMENTS: CONCURRENT REVIEW AND CERTIFICATION OF HEALTH CARE. (a) In this section, "investigational or experimental service or device" means a health care treatment, service, or device for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, service, or device but that is not yet broadly accepted as the prevailing standard of care.

(b) The commission by rule shall specify which health care treatments and services require express preauthorization or concurrent review by the insurance carrier. Treatments and services for a medical emergency do not require express preauthorization.

(c) The commission rules adopted under this section must provide that preauthorization and concurrent review are required at a minimum for:

(1) spinal surgery, as provided by Section 408.026;

(2) work-hardening or work-conditioning services provided by a health care facility that is not credentialed by an organization recognized by commission rules;

(3) inpatient hospitalization, including any procedure and length of stay;

(4) outpatient or ambulatory surgical services, as defined by commission rule; and

(5) any investigational or experimental services or devices.

(d) ~~[(b)]~~ The insurance carrier is not liable for those specified treatments and services requiring preauthorization unless preauthorization is sought by the claimant or health care provider and either obtained from the insurance carrier or ordered by the commission.

(e) The commission may not prohibit an insurance carrier and a health care provider from voluntarily discussing health care treatment and treatment plans, either

prospectively or concurrently, and may not prohibit an insurance carrier from certifying or agreeing to pay for health care consistent with those agreements.

SECTION 4.03. Subchapter B, Chapter 413, Labor Code, is amended by adding Section 413.0141 to read as follows:

Sec. 413.0141. INITIAL PHARMACEUTICAL COVERAGE. The commission may by rule provide that an insurance carrier shall provide for payment of specified pharmaceutical services sufficient for the first seven days following the date of injury if the health care provider requests and receives verification of insurance coverage and a verbal confirmation of an injury from the employer or from the insurance carrier as provided by Section 413.014. The rules adopted by the commission shall provide that an insurance carrier is eligible for reimbursement for pharmaceutical services paid under this section from the subsequent injury fund in the event the injury is determined not to be compensable.

SECTION 4.04. The Texas Workers' Compensation Commission shall adopt the rules required under Sections 408.026 and 413.014, Labor Code, as amended by this article, not later than February 1, 2002. The changes in law made by Sections 408.026 and 413.014, Labor Code, as amended by this article, apply only to health care services requested or provided on or after the effective date of the rules adopted by the commission, and the former law is continued in effect for health care services requested or provided before that date. The commission may adopt rules required by Section 413.0141, Labor Code, as added by this article, on or after September 1, 2002.

ARTICLE 5. REQUIRED MEDICAL EXAMINATIONS; DESIGNATED DOCTORS

SECTION 5.01. Sections 408.004(a) and (c), Labor Code, are amended to read as follows:

(a) The commission may require an employee to submit to medical examinations to resolve any question about:

- (1) the appropriateness of the health care received by the employee; or
- (2) ~~[the impairment caused by the compensable injury;~~
- ~~[(3) the attainment of maximum medical improvement; or~~
- ~~[(4)] similar issues.~~

(c) The insurance carrier shall pay for:

- (1) an examination required under Subsection (a) or (b); and
- (2) the reasonable expenses [~~expense~~] incident to the employee in submitting to the examination.

SECTION 5.02. Subchapter A, Chapter 408, Labor Code, is amended by adding Section 408.0041 to read as follows:

Sec. 408.0041. DESIGNATED DOCTOR EXAMINATION. (a) At the request of an insurance carrier or an employee, the commission shall order a medical examination to resolve any question about:

- (1) the impairment caused by the compensable injury; or
- (2) the attainment of maximum medical improvement.

(b) A medical examination requested under Subsection (a) shall be performed by the next available doctor on the commission's list of designated doctors whose credentials are appropriate for the issue in question and the injured employee's medical condition. The designated doctor doing the review must be trained and experienced with the treatment and procedures used by the doctor treating the patient's medical condition, and the treatment and procedures performed must be within the scope of

practice of the designated doctor. The commission shall assign a designated doctor not later than the 10th day after the date on which the request under Subsection (a) is received, and the examination must be conducted not later than the 21st day after the date on which the commission issues the order under Subsection (a). An examination under this section may not be conducted more frequently than every 60 days, unless good cause for more frequent examinations exists, as defined by commission rules.

(c) The treating doctor and the insurance carrier are both responsible for sending to the designated doctor all of the injured employee's medical records relating to the issue to be evaluated by the designated doctor that are in their possession. The treating doctor and insurance carrier may send the records without a signed release from the employee. The designated doctor is authorized to receive the employee's confidential medical records to assist in the resolution of disputes. The treating doctor and insurance carrier may also send the designated doctor an analysis of the injured employee's medical condition, functional abilities, and return-to-work opportunities.

(d) To avoid undue influence on a person selected as a designated doctor under this section, and except as provided by Subsection (c), only the injured employee or an appropriate member of the staff of the commission may communicate with the designated doctor about the case regarding the injured employee's medical condition or history before the examination of the injured employee by the designated doctor. After that examination is completed, communication with the designated doctor regarding the injured employee's medical condition or history may be made only through appropriate commission staff members. The designated doctor may initiate communication with any doctor who has previously treated or examined the injured employee for the work-related injury or with peer reviewers identified by the insurance carrier.

(e) The designated doctor shall report to the commission. The report of the designated doctor has presumptive weight unless the great weight of the evidence is to the contrary. An employer may make a bona fide offer of employment subject to Sections 408.103(e) and 408.144(c) based on the designated doctor's report.

(f) If an insurance carrier is not satisfied with the opinion rendered by a designated doctor under this section, the insurance carrier may request the commission to order an employee to attend an examination by a doctor selected by the insurance carrier. The commission shall allow the insurance carrier reasonable time to obtain and present the opinion of the doctor selected under this subsection before the commission makes a decision on the merits of the issue in question.

(g) The insurance carrier shall pay for:

- (1) an examination required under Subsection (a) or (f); and
- (2) the reasonable expenses incident to the employee in submitting to the examination.

(h) An employee is not entitled to compensation, and an insurance carrier is authorized to suspend the payment of temporary income benefits, during and for a period in which the employee fails to submit to an examination required by this chapter unless the commission determines that the employee had good cause for the failure to submit to the examination. The commission may order temporary income benefits to be paid for the period for which the commission determined that the employee had good cause. The commission by rule shall ensure that:

- (1) an employee receives reasonable notice of an examination and the insurance carrier's basis for suspension; and

(2) the employee is provided a reasonable opportunity to reschedule an examination for good cause.

(i) If the report of a designated doctor indicates that an employee has reached maximum medical improvement, the insurance carrier may suspend or reduce the payment of temporary income benefits immediately.

(j) The employee or the insurance carrier may request that the commission hold an expedited benefit review conference to dispute a decision made under this section. The commission shall adopt rules as necessary to implement this subsection. This subsection expires September 1, 2003.

SECTION 5.03. Sections 408.122(b) and (c), Labor Code, are amended to read as follows:

(b) To be eligible to serve as a designated doctor, a doctor must meet specific qualifications, including training in the determination of impairment ratings. The executive director shall develop qualification standards and administrative policies to implement this subsection, and the commission may adopt rules as necessary. The designated doctor doing the review must be trained and experienced with the treatment and procedures used by the doctor treating the patient's medical condition, and the treatment and procedures performed must be within the scope of practice of the designated doctor. A designated doctor's credentials must be appropriate for the issue in question and the injured employee's medical condition. [~~To the extent possible, a designated doctor must be in the same discipline and licensed by the same board of examiners as the employee's doctor of choice.~~]

(c) [~~If a dispute exists as to whether the employee has reached maximum medical improvement, the commission shall direct the employee to be examined by a designated doctor chosen by mutual agreement of the parties. If the parties are unable to agree on a designated doctor, the commission shall direct the employee to be examined by a designated doctor chosen by the commission. The designated doctor shall report to the commission.~~] The report of the designated doctor has presumptive weight, and the commission shall base its determination of whether the employee has reached maximum medical improvement on the report unless the great weight of the other medical evidence is to the contrary.

SECTION 5.04. Section 408.125, Labor Code, is amended to read as follows:

Sec. 408.125. DISPUTE AS TO IMPAIRMENT RATING. (a) If an impairment rating is disputed, the commission shall direct the employee to the next available doctor on the commission's list of designated doctors, as provided by Section 408.0041 [~~be examined by a designated doctor chosen by mutual agreement of the parties~~].

(b) [~~If the parties are unable to agree on a designated doctor, the commission shall direct the employee to be examined by a designated doctor chosen by the commission:~~

[~~(e)~~] The designated doctor shall report in writing to the commission.

(c) The [~~(d)~~] If the designated doctor is chosen by the parties, the commission shall adopt the impairment rating made by the designated doctor:

[~~(e)~~] ~~If the designated doctor is chosen by the commission, the~~ report of the designated doctor shall have presumptive weight, and the commission shall base the impairment rating on that report unless the great weight of the other medical evidence is to the contrary. If the great weight of the medical evidence contradicts the impairment rating contained in the report of the designated doctor chosen by the commission, the commission shall adopt the impairment rating of one of the other doctors.

(d) [(f)] To avoid undue influence on a person selected as a designated doctor under this section, only the injured employee or an appropriate member of the staff of the commission may communicate with the designated doctor about the case regarding the injured employee's medical condition or history before the examination of the injured employee by the designated doctor. After that examination is completed, communication with the designated doctor regarding the injured employee's medical condition or history may be made only through appropriate commission staff members. The designated doctor may initiate communication with any doctor who has previously treated or examined the injured employee for the work-related injury.

(e) Notwithstanding Subsection (d), the treating doctor and the insurance carrier are both responsible for sending to the designated doctor all the injured employee's medical records that are in their possession and that relate to the issue to be evaluated by the designated doctor. The treating doctor and the insurance carrier may send the records without a signed release from the employee. The designated doctor is authorized to receive the employee's confidential medical records to assist in the resolution of disputes. The treating doctor and the insurance carrier may also send the designated doctor an analysis of the injured employee's medical condition, functional abilities, and return-to-work opportunities.

(f) [(g)] A violation of Subsection (d) [(f)] is a Class C administrative violation.

SECTION 5.05. The Research and Oversight Council on Workers' Compensation shall report to the legislature not later than December 31, 2004, regarding issues related to medical examinations conducted under Section 408.0041, Labor Code, as added by this article.

SECTION 5.06. Section 408.004, Labor Code, as amended by this article, and Section 408.0041, Labor Code, as added by this article, apply only to a request for a medical examination made to the Texas Workers' Compensation Commission by an insurance carrier on or after January 1, 2002.

ARTICLE 6. MEDICAL BENEFIT REGULATION; DISPUTE RESOLUTION

SECTION 6.01. Section 408.028, Labor Code, is amended to read as follows:

Sec. 408.028. PHARMACEUTICAL SERVICES. (a) A physician [health-care practitioner] providing care to an employee under this subchapter shall prescribe for the employee any necessary prescription drugs, and order over-the-counter alternatives to prescription medications as clinically appropriate and applicable, in accordance with applicable state law and as provided by Subsection (b). A doctor providing care may order over-the-counter alternatives to prescription medications, when clinically appropriate, in accordance with applicable state law and as provided by Subsection (b).

(b) The commission by rule shall develop an open formulary under Section 413.011 that requires the use of generic pharmaceutical medications and clinically appropriate over-the-counter alternatives to prescription medications unless otherwise specified by the prescribing doctor, in accordance with applicable state law.

(c) Except as otherwise provided by this subtitle, an [An] insurance carrier may not require an employee to use pharmaceutical services designated by the carrier.

(d) The commission shall adopt rules to allow an employee to purchase over-the-counter alternatives to prescription medications prescribed or ordered under Subsection (a) or (b) and to obtain reimbursement from the insurance carrier for those medications.

SECTION 6.02. Section 413.011, Labor Code, is amended to read as follows:

Sec. 413.011. REIMBURSEMENT POLICIES AND GUIDELINES; TREATMENT GUIDELINES ~~[AND MEDICAL POLICIES]~~. (a) ~~The commission [by rule]~~ shall use health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. To achieve standardization, the commission shall adopt the most current reimbursement methodologies, models, and values or weights used by the federal Health Care Financing Administration, including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirements as necessary to meet the requirements of Section 413.053.

(b) In determining the appropriate fees, the commission shall also develop conversion factors or other payment adjustment factors taking into account economic indicators in health care and the requirements of Subsection (d). The commission shall also provide for reasonable fees for the evaluation and management of care as required by Section 408.025(c) and commission rules. This section does not adopt the Medicare fee schedule, and the commission shall not adopt conversion factors or other payment adjustment factors based solely on those factors as developed by the federal Health Care Financing Administration.

(c) This section may not be interpreted in a manner that would discriminate in the amount or method of payment or reimbursement for services in a manner prohibited by Section 3(d), Article 21.52, Insurance Code, or as restricting the ability of chiropractors to serve as treating doctors as authorized by this subtitle. The commission shall also develop guidelines relating to ~~[establish medical policies and guidelines relating to:~~

~~[(1) fees charged or paid for medical services for employees who suffer compensable injuries, including guidelines relating to payment of fees for specific medical treatments or services;~~

~~[(2) use of medical services by employees who suffer compensable injuries; and~~

~~[(3) fees charged or paid for providing expert testimony relating to an issue arising under this subtitle.~~

(d) [(b)] Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.

(e) The commission by rule may adopt treatment guidelines, including return-to-work guidelines. If adopted, treatment guidelines adopted must be nationally recognized, scientifically valid, and outcome-based and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care [(c) Medical policies adopted by the commission must be consistent with Sections 413.013, 413.020, 413.052, and 413.053].

(f) [(d)] The commission by rule may [shall] establish medical policies or treatment guidelines relating to necessary treatments for injuries.

(g) Any medical [~~Medical~~] policies or guidelines adopted by the commission must ~~shall~~ be:

(1) designed to ensure the quality of medical care and to achieve effective medical cost control;

(2) designed to enhance a timely and appropriate return to work; and

(3) consistent with Sections 413.013, 413.020, 413.052, and 413.053.

SECTION 6.03. Section 413.015(a), Labor Code, is amended to read as follows:

(a) Insurance carriers shall make appropriate payment of charges for medical services provided under this subtitle. An insurance carrier may contract with a separate entity to forward payments for medical services. Any payment due the insurance carrier from the separate entity must be made in accordance with the contract. The separate entity is subject to the direction of the insurance carrier, and the insurance carrier is responsible for the actions of the separate entity under this subsection.

SECTION 6.04. Section 413.031, Labor Code, is amended to read as follows:

Sec. 413.031. MEDICAL DISPUTE RESOLUTION. (a) A party, including a health care provider, is entitled to a review of a medical service provided or for which authorization of payment is sought if a health care provider is:

(1) denied payment or paid a reduced amount for the medical service rendered;

(2) denied authorization for the payment for the service requested or performed if authorization is required or allowed by this subtitle or [the medical policies of the] commission rules; [or]

(3) ordered by the commission [division] to refund a payment received; or

(4) ordered to make a payment that was refused or reduced for a medical service rendered.

(b) A health care provider who submits a charge in excess of the fee guidelines or treatment policies is entitled to a review of the medical service to determine if reasonable medical justification exists for the deviation. A claimant is entitled to a review of a medical service for which preauthorization is sought by the health care provider and denied by the insurance carrier. The commission shall adopt rules to notify claimants of their rights under this subsection.

(c) In resolving disputes over the amount of payment due for services determined to be medically necessary and appropriate for treatment of a compensable injury, the role of the commission is to adjudicate the payment given the relevant statutory provisions and commission rules. The commission shall publish on its Internet website its medical dispute decisions, including decisions of independent review organizations, and any subsequent decisions by the State Office of Administrative Hearings. Before publication, the commission shall redact only that information necessary to prevent identification of the injured worker.

(d) A review of the medical necessity of a health care [medical] service requiring preauthorization under Section 413.014 or commission rules under that [this] section shall be conducted by an independent review organization under Article 21.58C, Insurance Code, in the same manner as reviews of utilization review decisions by health maintenance organizations. It is a defense for the insurance carrier if the carrier timely complies with the decision of the independent review organization [provided by a health care provider professional review organization if requested by the health care practitioner or if ordered by the commission].

(e) Except as provided by Subsection (d), a review of the medical necessity of a health care service provided under this chapter or Chapter 408 shall be conducted by an independent review organization under Article 21.58C, Insurance Code, in the same manner as reviews of utilization review decisions by health maintenance organizations. It is a defense for the insurance carrier if the carrier timely complies with the decision of the independent review organization.

(f) The commission by rule shall specify the appropriate dispute resolution process for disputes in which a claimant has paid for medical services and seeks reimbursement.

(g) In performing a review of medical necessity under Subsection (d) or (e), an independent review organization may request that the commission order an examination by a designated doctor under Chapter 408.

(h) The insurance carrier shall pay the cost of the review if the dispute arises in connection with a request for health care services that require preauthorization under Section 413.014 or commission rules under that section.

(i) Except as provided by Subsection (h), the cost of the review shall be paid by the nonprevailing party.

(j) Notwithstanding Subsections (h) and (i), an employee may not be required to pay any portion of the cost of a review.

(k) Except as provided by Subsection (l), a ~~(+d)~~ A party to a medical dispute that remains unresolved after a review of the medical service under this section is entitled to a hearing. The hearing shall be conducted by the State Office of Administrative Hearings within 90 days of receipt of a request for a hearing in the manner provided for a contested case under Chapter 2001, Government Code (the administrative procedure law). A party who has exhausted the party's administrative remedies under this subtitle and who is aggrieved by a final decision of the State Office of Administrative Hearings may seek judicial review of the decision. Judicial review under this subsection shall be conducted in the manner provided for judicial review of contested cases under Subchapter G, Chapter 2001, Government Code.

(l) A party to a medical dispute regarding spinal surgery that remains unresolved after a review by an independent review organization as provided by Subsections (d) and (e) is entitled to dispute resolution as provided by Chapter 410.

SECTION 6.05. Section 413.041, Labor Code, is amended to read as follows:

Sec. 413.041. DISCLOSURE. (a) Each health care practitioner shall disclose to the commission the identity of any health care provider in which the health care practitioner, or the health care provider that employs the health care practitioner, has a financial interest. The health care practitioner shall make the disclosure in the manner provided by commission rule.

(b) The commission shall require by rule that a doctor disclose financial interests in other health care providers as a condition of registration for the approved doctor list established under Section 408.023 and shall define "financial interest" for purposes of this subsection as provided by analogous federal regulations. The commission by rule shall adopt the federal standards that prohibit the payment or acceptance of payment in exchange for health care referrals relating to fraud, abuse, and anti-kickbacks.

(c) A health care provider that fails to comply with this section is subject to penalties and sanctions as provided by this subtitle, including forfeiture of the right to reimbursement for services rendered during the period of noncompliance.

(d) The commission shall publish all final disclosure enforcement orders issued under this section on the commission's Internet website. [A health care provider who refers a workers' compensation claimant to another health care provider in which the referring provider has more than a five percent financial interest shall file an annual disclosure statement with the commission as provided by commission rules and shall disclose the interest to the insurance carrier at the time of the referral. The referring provider shall specify the degree of the financial interest and shall provide other information as required by commission rules.]

SECTION 6.06. Section 415.0035, Labor Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) An insurance carrier or health care provider commits an administrative violation if that person violates this subtitle or a rule, order, or decision of the commission.

(f) A subsequent administrative violation under this section, after prior notice to the insurance carrier or health care provider of noncompliance, is subject to penalties as provided by Section 415.021. Prior notice under this subsection is not required if the violation was committed wilfully or intentionally, or if the violation was of a decision or order of the commission.

SECTION 6.07. Section 415.021(a), Labor Code, is amended to read as follows:

(a) The commission may assess an administrative penalty against a person who commits an administrative violation. Notwithstanding Subsection (c), the commission by rule shall adopt a schedule of specific monetary administrative penalties for specific violations under this subtitle.

SECTION 6.08. Section 415.023, Labor Code, is amended to read as follows:

Sec. 415.023. COMMISSION OF WRONGFUL ACT AS MATTER OF PRACTICE; ADMINISTRATIVE VIOLATION. (a) A person who commits an administrative violation under Section 415.001, 415.002, ~~[or] 415.003, or 415.0035~~ as a matter of practice is subject to an applicable rule adopted under Subsection (b) in addition to the penalty assessed for the violation.

(b) The commission may adopt rules providing for:

(1) a reduction or denial of fees;
(2) public or private reprimand by the commission;
(3) suspension from practice before the commission; ~~[or]~~
(4) restriction, suspension, or revocation of the right to receive reimbursement under this subtitle; or

(5) referral and petition to the appropriate licensing authority for appropriate disciplinary action, including the restriction, suspension, or revocation of the person's license.

SECTION 6.09. (a) The Texas Workers' Compensation Commission shall adopt the rules required by Section 408.028, Labor Code, as amended by this article, not later than February 1, 2002.

(b) The Texas Workers' Compensation Commission shall adopt the rules and fee guidelines under Section 413.011, Labor Code, as amended by this article, not later than May 1, 2002. The treatment guidelines adopted under Chapter 413, Labor Code, in effect immediately before September 1, 2001, are abolished on January 1, 2002.

(c) The Texas Workers' Compensation Commission shall adopt rules as required by Section 413.041, Labor Code, as amended by this article, not later than June 1, 2002.

(d) The change in law made by this article by the amendment of Section 413.031, Labor Code, applies only to a request for a review of medical services filed with the Texas Workers' Compensation Commission on or after January 1, 2002. A request filed with the commission before that date is covered by the law in effect immediately before January 1, 2002, and that law is continued in effect for that purpose.

(e) Section 413.041(c), Labor Code, as added by this article, applies only to a failure to comply with Section 413.041 that occurs after June 1, 2002.

(f) Sections 415.023 and 415.0035, Labor Code, as amended by this article, apply only to a violation occurring on or after September 1, 2001.

ARTICLE 7. SUNSET REVIEW; AUDIT

SECTION 7.01. Section 401.002, Labor Code, is amended to read as follows:

Sec. 401.002. APPLICATION OF SUNSET ACT. The Texas Workers' Compensation Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, ~~2005~~ [2007].

SECTION 7.02. Subchapter A, Chapter 401, Labor Code, is amended by adding Section 401.003 to read as follows:

Sec. 401.003. ACTIVITIES OF THE STATE AUDITOR. (a) The commission is subject to audit by the state auditor in accordance with Chapter 321, Government Code. The state auditor may audit the commission's:

- (1) structure and internal controls;
- (2) level and quality of service provided to employers, injured employees, insurance carriers, self-insured governmental entities, and other participants;
- (3) implementation of statutory mandates;
- (4) employee turnover;
- (5) information management systems, including public access to nonconfidential information;
- (6) adoption and implementation of administrative rules; and
- (7) assessment of administrative violations and the penalties for those violations.

(b) Nothing in this section limits the authority of the state auditor under Chapter 321, Government Code.

ARTICLE 8. ATTORNEY'S FEES

SECTION 8.01. Section 408.221, Labor Code, is amended to read as follows:

Sec. 408.221. ATTORNEY'S FEES PAID TO CLAIMANT'S COUNSEL. (a) An attorney's fee, including a contingency fee, for representing a claimant before the commission or court under this subtitle must be approved by the commission or court.

(b) Except as otherwise provided, an attorney's fee under this section is based on the attorney's time and expenses according to written evidence presented to the commission or court. Except as provided by Subsection (c) or Section 408.147(c), the attorney's fee shall be paid from the claimant's recovery.

(c) An insurance carrier that seeks judicial review under Subchapter G, Chapter 410, of a final decision of a commission appeals panel regarding compensability or eligibility for, or the amount of, income or death benefits is liable for reasonable and necessary attorney's fees as provided by Subsection (d) incurred by the claimant as a result of the insurance carrier's appeal if the claimant prevails on an issue on which judicial review is sought by the insurance carrier in accordance with the limitation of issues contained in Section 410.302. If the carrier appeals multiple issues

and the claimant prevails on some, but not all, of the issues appealed, the court shall apportion and award fees to the claimant's attorney only for the issues on which the claimant prevails. In making that apportionment, the court shall consider the factors prescribed by Subsection (d). This subsection does not apply to attorney's fees for which an insurance carrier may be liable under Section 408.147. An award of attorney's fees under this subsection is not subject to commission rules adopted under Subsection (f). This subsection expires September 1, 2005.

(d) In approving an attorney's fee under this section, the commission or court shall consider:

- (1) the time and labor required;
- (2) the novelty and difficulty of the questions involved;
- (3) the skill required to perform the legal services properly;
- (4) the fee customarily charged in the locality for similar legal services;
- (5) the amount involved in the controversy;
- (6) the benefits to the claimant that the attorney is responsible for securing; and
- (7) the experience and ability of the attorney performing the services.

(e) ~~(f)~~ The commission by rule or the court may provide for the commutation of an attorney's fee, except that the attorney's fee shall be paid in periodic payments in a claim involving death benefits if the only dispute is as to the proper beneficiary or beneficiaries.

(f) ~~(g)~~ The commission by rule shall provide guidelines for maximum attorney's fees for specific services in accordance with this section.

(g) ~~(h)~~ An attorney's fee may not be allowed in a case involving a fatal injury or lifetime income benefit if the insurance carrier admits liability on all issues and tenders payment of maximum benefits in writing under this subtitle while the claim is pending before the commission.

(h) ~~(i)~~ An attorney's fee shall be paid to the attorney by separate draft.

(i) ~~(j)~~ Except as provided by Subsection (c) or Section 408.147(c), an attorney's fee may not exceed 25 percent of the claimant's recovery.

SECTION 8.02. Section 408.147(c), Labor Code, is amended to read as follows:

(c) If an insurance carrier disputes a commission determination that an employee is entitled to supplemental income benefits or the amount of supplemental income benefits due and the employee prevails on any disputed issue, the insurance carrier is liable for reasonable and necessary attorney's fees incurred by the employee as a result of the insurance carrier's dispute and for supplemental income benefits accrued but not paid and interest on that amount, according to Section 408.064. Attorney's fees awarded under this subsection are not subject to Sections 408.221(b), ~~(f)~~ ~~(g)~~, and ~~(i)~~ ~~(j)~~.

SECTION 8.03. Section 408.222(b), Labor Code, is amended to read as follows:

(b) In determining whether a fee is reasonable under this section, the commission or court shall consider issues analogous to those listed under Section ~~408.221(d)~~ ~~[408.221(e)]~~. The defense counsel shall present written evidence to the commission or court relating to:

- (1) the time spent and expenses incurred in defending the case; and
- (2) other evidence considered necessary by the commission or court in making a determination under this section.

SECTION 8.04. The change in law made by this article applies only to a request for judicial review that occurs on or after September 1, 2001. A request for judicial review that occurs before that date is governed by the law in effect on the date the request is made, and the former law is continued in effect for that purpose.

ARTICLE 9. LIFETIME INCOME BENEFITS

SECTION 9.01. Section 408.161(a), Labor Code, is amended to read as follows:

- (a) Lifetime income benefits are paid until the death of the employee for:
- (1) total and permanent loss of sight in both eyes;
 - (2) loss of both feet at or above the ankle;
 - (3) loss of both hands at or above the wrist;
 - (4) loss of one foot at or above the ankle and the loss of one hand at or above the wrist;
 - (5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; ~~or~~
 - (6) a physically traumatic injury to the brain resulting in incurable insanity or imbecility; or
 - (7) third degree burns that cover at least 40 percent of the body and require grafting, or third degree burns covering the majority of either both hands or one hand and the face.

ARTICLE 10. AVERAGE WEEKLY WAGE; MULTIPLE EMPLOYMENT; SUBSEQUENT INJURY FUND

SECTION 10.01. Section 403.006, Labor Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

- (b) The subsequent injury fund is liable for:
- (1) the payment of compensation as provided by Section 408.162;
 - (2) reimbursement of insurance carrier claims of overpayment of benefits made under an interlocutory order or decision of the commission as provided by this subtitle, consistent with the priorities established by rule by the commission;
 - (3) reimbursement of insurance carrier claims as provided by Sections 408.042 and 413.0141, consistent with the priorities established by rule by the commission; and
 - (4) the payment of an assessment of feasibility and the development of regional networks established under Section 408.0221.
- (d) Based on an actuarial assessment of the funding available under Section 403.007(e), the commission may make partial payment of insurance carrier claims under Subsection (b)(3).

SECTION 10.02. Section 403.007, Labor Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) If the commission determines that the funding under Subsection (a) is not adequate to meet the expected obligations of the subsequent injury fund established under Section 403.006, the fund shall be supplemented by the collection of a maintenance tax paid by insurance carriers, other than a governmental entity, as provided by Sections 403.002 and 403.003. The rate of assessment must be adequate to provide 120 percent of the projected unfunded liabilities of the fund for the next biennium as certified by an independent actuary or financial advisor.

(f) The commission's actuary or financial advisor shall report biannually to the Research and Oversight Council on Workers' Compensation on the financial condition

and projected assets and liabilities of the subsequent injury fund. The commission shall make the reports available to members of the legislature and the public. The commission may purchase annuities to provide for payments due to claimants under this subtitle if the commission determines that the purchase of annuities is financially prudent for the administration of the fund.

SECTION 10.03. Section 408.042, Labor Code, is amended to read as follows:

Sec. 408.042. AVERAGE WEEKLY WAGE FOR PART-TIME EMPLOYEE OR EMPLOYEE WITH MULTIPLE EMPLOYMENT. (a) The average weekly wage of a part-time employee who limits the employee's work to less than [~~full-time hours or~~] a full-time workweek as a regular course of that employee's conduct is computed as provided by Section 408.041.

(b) For part-time employees not covered by Subsection (a), the average weekly wage:

(1) for determining temporary income benefits is computed as provided by Section 408.041; and

(2) for determining impairment income benefits, supplemental income benefits, lifetime income benefits, and death benefits is computed as follows:

(A) if the employee has worked for the employer for at least the 13 weeks immediately preceding the date of the injury, the average weekly wage is computed by dividing the sum of the wages paid in the 13 consecutive weeks immediately preceding the date of the injury by 13 and adjusting that amount to the weekly wage level the employee would have attained by working a full-time workweek at the same rate of pay; or

(B) if the employee has worked for the employer for less than 13 weeks immediately preceding the date of the injury, the average weekly wage is equal to:

(i) the weekly wage that the employer pays a similar employee for similar services based on a [in] full-time workweek [employment]; or

(ii) if a similar employee does not exist, the usual wage paid in that vicinity for the same or similar services based on a [provided for compensation in] full-time workweek [employment].

(c) For employees with multiple employment, the average weekly wage for determining temporary income benefits, impairment income benefits, supplemental income benefits, lifetime income benefits, and death benefits, is computed as follows:

(1) the average weekly wage for an employee with multiple employment is equal to the sum of the average weekly wages computed under Subdivisions (2) and (3);

(2) for each of the employers for whom the employee has worked for at least the 13 weeks immediately preceding the date of injury, the average weekly wage is equal to the sum of the wages paid by that employer to the employee in the 13 weeks immediately preceding the injury divided by 13;

(3) for each of the employers for whom the employee has worked for less than the 13 weeks immediately preceding the date of the injury, the average weekly wage is equal to:

(A) the weekly wage that employer pays similar employees for similar services; or

(B) if a similar employee does not exist, the usual weekly wage paid in that vicinity for the same or similar services; and

(4) the average weekly wage of an employee with multiple employment who limits the employee's work to less than a full-time workweek, but does not do so as a regular course of that employee's conduct, is adjusted to the weekly wage level the employee would have attained by working a full-time workweek at the employee's average rate of pay.

(d) The commission shall:

(1) prescribe a form to collect information regarding the wages of employees with multiple employment; and

(2) by rule, determine the manner by which the commission collects and distributes wage information to implement this section.

(e) For an employee with multiple employment, only the employee's wages that are reportable for federal income tax purposes may be considered. The employee shall document and verify wage payments subject to this section.

(f) If the commission determines that computing the average weekly wage for an employee as provided by Subsection (c) is impractical or unreasonable, the commission shall set the average weekly wage in a manner that more fairly reflects the employee's average weekly wage and that is fair and just to both parties or is in the manner agreed to by the parties. The commission by rule may define methods to determine a fair and just average weekly wage consistent with this section.

(g) An insurance carrier is entitled to apply for and receive reimbursement at least annually from the subsequent injury fund for the amount of income benefits paid to a worker under this section that are based on employment other than the employment during which the compensable injury occurred. The commission may adopt rules that govern the documentation, application process, and other administrative requirements necessary to implement this subsection.

(h) In this section:

(1) "Employee with multiple employment" means an employee who has more than one employer.

(2) "Full-time workweek" means a 40-hour workweek.

(3) "Part-time[, "~~part-time~~"] employee" means an employee who, at the time of the injury, was working less than a ~~[the]~~ full-time ~~[hours or full-time]~~ workweek for the employer for whom the employee was working when the compensable injury occurred ~~[of similar employees in the same employment, whether for the same or a different employer].~~

SECTION 10.04. Subchapter C, Chapter 408, Labor Code, is amended by adding Section 408.0446 to read as follows:

Sec. 408.0446. AVERAGE WEEKLY WAGE; SCHOOL DISTRICT EMPLOYEE. (a) For determining the amount of temporary income benefits of a school district employee under Chapter 504, the average weekly wage is computed on the basis of wages earned in a week rather than on the basis of wages paid in a week. The wages earned in any given week are equal to the amount that would be deducted from an employee's salary if the employee were absent from work for one week and the employee did not have personal leave available to compensate the employee for lost wages for that week.

(b) An insurance carrier may adjust a school district employee's average weekly wage as often as necessary to reflect the wages the employee reasonably could expect to earn during the period for which temporary income benefits are paid. In adjusting

a school district employee's average weekly wage under this subsection, the insurance carrier may consider any evidence of the employee's reasonable expectation of earnings.

(c) For determining the amount of impairment income benefits, supplemental income benefits, lifetime income benefits, or death benefits of a school district employee under Chapter 504, the average weekly wage of the employee is computed by dividing the total amount of wages earned by the employee during the 12 months immediately preceding the date of the injury by 50.

(d) If the commission determines that computing the average weekly wage of a school district employee as provided by this section is impractical because the employee did not earn wages during the 12 months immediately preceding the date of the injury, the commission shall compute the average weekly wage in a manner that is fair and just to both parties.

(e) The commission shall adopt rules as necessary to implement this section.

SECTION 10.05. (a) Except as provided by Subsection (b) of this section, the change in law made by this article applies only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after July 1, 2002. A claim based on a compensable injury that occurs before that date is governed by the law in effect on the date the compensable injury occurred, and the former law is continued in effect for that purpose.

(b) Section 408.0446, Labor Code, as added by this article, takes effect December 1, 2001, and applies only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after that date. A claim based on a compensable injury that occurs before that date is governed by the law in effect on the date that the compensable injury occurred, and the former law is continued in effect for that purpose.

ARTICLE 11. INSURANCE CARRIER INFORMATION

SECTION 11.01. Section 410.164, Labor Code, is amended by adding Subsection (c) to read as follows:

(c) At each contested case hearing, as applicable, the insurance carrier shall file with the hearing officer and shall deliver to the claimant a single document stating the true corporate name of the insurance carrier and the name and address of the insurance carrier's registered agent for service of process. The document is part of the record of the contested case hearing.

SECTION 11.02. Section 410.204, Labor Code, is amended by adding Subsection (d) to read as follows:

(d) Each final decision of the appeals panel shall conclude with a separate paragraph stating: "The true corporate name of the insurance carrier is (NAME IN BOLD PRINT) and the name and address of its registered agent for service of process is (NAME AND ADDRESS IN BOLD PRINT)."

SECTION 11.03. The change in law made by this article applies only to a workers' compensation hearing that is conducted on or after the effective date of this Act. A hearing that is conducted before that date is governed by the law in effect on the date the hearing was conducted, and the former law is continued in effect for that purpose.

ARTICLE 12. APPEAL REQUIREMENTS

SECTION 12.01. Section 410.202, Labor Code, is amended by adding Subsection (d) to read as follows:

(d) Saturdays and Sundays and holidays listed in Section 662.003, Government Code, are not included in the computation of the time in which a request for an appeal under Subsection (a) or a response under Subsection (b) must be filed.

SECTION 12.02. The change in law made by this article applies only to an appeal in a workers' compensation proceeding filed on or after the effective date of this Act. An appeal filed before the effective date of this Act is governed by the law in effect on the date the appeal was filed, and the former law is continued in effect for that purpose.

ARTICLE 13. STUDY ON DRUG-FREE WORKPLACE REQUIREMENTS

SECTION 13.01. Subchapter G, Chapter 411, Labor Code, is amended by adding Section 411.093 to read as follows:

Sec. 411.093. STUDY ON DRUG-FREE WORKPLACE; REPORT. (a) The commission shall study:

(1) the implementation and development of drug-free workplace policies under this subchapter;

(2) the use of drug-free workplace requirements adopted by other jurisdictions to reduce the adverse impact on the operation of workers' compensation insurance systems of drug abuse and its effects in the workplace; and

(3) any other aspects of the effect of drug abuse on the operation of the workers' compensation insurance system in this state as considered appropriate by the commission or the Research and Oversight Council on Workers' Compensation.

(b) The commission shall report not later than February 1, 2003, to the legislature and the Research and Oversight Council on Workers' Compensation regarding the study conducted under this section. The report must include:

(1) any commission recommendations for legislative changes in the workers' compensation laws regarding the implementation of a drug-free workplace requirement; and

(2) an analysis of the possible effects of the adoption of a workers' compensation insurance premium discount program for employers who maintain a drug-free workplace on the operation of the workers' compensation insurance system in this state.

(c) On the request of the commission, the Texas Department of Insurance shall assist the commission in the performance of its duties under this section.

(d) This section expires September 1, 2003.

ARTICLE 14. WORKERS' COMPENSATION FOR STATE EMPLOYEES

SECTION 14.01. Section 412.012, Labor Code, is amended to read as follows:

Sec. 412.012. FUNDING. ~~(a)~~ The office shall be administered through money appropriated by the legislature and through ~~(1) interagency contracts for the risk management program and (2)~~ the allocation program for the financing of state workers' compensation benefits and risk management costs.

Sec. 412.0121. INTERAGENCY CONTRACTS. ~~(a) (b) Interagency Contracts:~~ ~~(b)~~ Each state agency shall enter into an interagency contract with the office under Chapter 771, Government Code, to pay the costs incurred by the office in administering this chapter for the benefit of that state agency.

~~(b)~~ Costs payable under the contract include the cost of:

~~(1) (A)~~ services of office employees;

~~(2) (B)~~ materials; and

~~(3) (C)~~ equipment, including computer hardware and software.

(c) ~~[(2)]~~ The ~~[amount of the]~~ costs of risk management services provided ~~[to be paid]~~ by a state agency under the interagency contract shall be allocated in the same proportion and determined in the same manner as the costs of workers' compensation ~~[is based on]:~~

~~[(A) the number of employees of the agency compared with the total number of employees of all state agencies to which this chapter applies;~~

~~[(B) the dollar value of the agency's property and asset and liability exposure compared to that of all state agencies to which this chapter applies; and~~

~~[(C) the number and aggregate cost of claims and losses incurred by the state agency compared to those incurred by all state agencies to which this chapter applies].~~

Sec. 412.0122. STATE SELF-INSURING FOR WORKERS' COMPENSATION. ~~[(c)]~~ The state is self-insuring with respect to an employee's compensable injury. ~~[The legislature shall appropriate the amount designated by the appropriation structure for the payment of state workers' compensation claims costs to the office. This section does not affect the reimbursement of claims costs by funds other than general revenue funds, as provided by the General Appropriations Act.]~~

Sec. 412.0123. ALLOCATION OF WORKERS' COMPENSATION AND RISK MANAGEMENT COSTS; RISK REWARD PROGRAM. (a) The office shall establish a risk reward for the payment of workers' compensation claims and risk management services that are incurred by a state agency subject to Chapter 501.

(b) The office shall establish a formula for allocating the state's workers' compensation costs among covered agencies based on the claims experience of each agency, the current and projected size of each agency's workforce, each agency's payroll, the related costs incurred in administering claims, and other factors that the office determines to be relevant. The agency may provide modifiers to the formula to promote the effective implementation of risk management programs by state agencies.

(c) The board has final authority to determine the assessments to be paid by the covered agencies.

Sec. 412.0124. DEPOSIT OF WORKERS' COMPENSATION SUBROGATION RECOVERIES. ~~[(d) State Workers' Compensation Account. (1)]~~ All money recovered by the director from a third party through subrogation shall be deposited into the state workers' compensation account in general revenue.

~~[(2) Funds deposited under this section may be used for the payment of compensation and other benefits to state employees.]~~

SECTION 14.02. Section 501.001(5), Labor Code, is amended to read as follows:

(5) "Employee" means a person who is:

(A) in the service of the state pursuant to an election, appointment, or express oral or written contract of hire;

(B) paid from state funds but whose duties require that the person work and frequently receive supervision in a political subdivision of the state;

(C) a peace officer employed by a political subdivision, while the peace officer is exercising authority granted under:

(i) Article 12, Code of Criminal Procedure; or

(ii) Articles 14.03(d) and (g) [Article 14.03(c)], Code of Criminal

Procedure; or

(D) a member of the state military forces, as defined by Section 431.001, Government Code, who is engaged in authorized training or duty.

SECTION 14.03. Subchapter C, Chapter 505, Labor Code, is amended by adding Section 505.060 to read as follows:

Sec. 505.060. EFFECT OF SICK LEAVE; ANNUAL LEAVE. (a) An employee may elect to use accrued sick leave before receiving income benefits. If an employee elects to use sick leave, the employee is not entitled to income benefits under this chapter until the employee has exhausted the employee's accrued sick leave.

(b) An employee may elect to use all or any number of weeks of accrued annual leave after the employee's accrued sick leave is exhausted. If an employee elects to use annual leave, the employee is not entitled to income benefits under this chapter until the elected number of weeks of leave have been exhausted.

ARTICLE 15. INTEREST OR DISCOUNT RATE

SECTION 15.01. Section 401.023(b), Labor Code, is amended to read as follows:

(b) The commission shall compute and publish the interest and discount rate quarterly, using the treasury constant maturity [auction] rate ~~[quoted on a discount basis]~~ for one-year ~~[the 52-week]~~ treasury bills issued by the United States government, as published by the Federal Reserve Board on ~~[the date nearest to]~~ the 15th day preceding the first day of the calendar quarter for which the rate is to be effective, plus 3.5 percent. For this purpose, calendar quarters begin January 1, April 1, July 1, and October 1.

ARTICLE 16. PROHIBITION ON CERTAIN WAIVERS

SECTION 16.01. Section 406.033, Labor Code, is amended by adding Subsection (e) to read as follows:

(e) A cause of action described in Subsection (a) may not be waived by an employee before the employee's injury or death. Any agreement by an employee to waive a cause of action or any right described in Subsection (a) before the employee's injury or death is void and unenforceable.

ARTICLE 17. GENERAL TRANSITION; EFFECTIVE DATE

SECTION 17.01. Except as otherwise provided by this Act, this Act applies only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after the effective date of this Act. A claim based on a compensable injury that occurs before that date is governed by the law in effect on the date the compensable injury occurred, and the former law is continued in effect for that purpose.

SECTION 17.02. Except as expressly provided, 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. Except as otherwise provided by this Act, if this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

The amendment was read.

POINT OF ORDER

Senator Gallegos raised a point of order that Floor Amendment No. 1 was in violation of Senate Rule 7.09 (Analysis of Fiscal and Other Implications of Bill or Resolution).

On motion of Senator Gallegos and by unanimous consent, the point of order was withdrawn.

Question—Shall Floor Amendment No. 1 to **HB 2600** be adopted?

(Senator Harris in Chair)

Senator Duncan offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend Floor Amendment No. 1 to **HB 2600** by adding the words "for that injury" after "provider" and before "." (page 20, line 16, Floor Amendment No. 1).

The amendment to Floor Amendment No. 1 was read and was adopted by a viva voce vote.

Senator Sibley offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 3

Amend Floor Amendment No. 1 to **HB 2600**, in Sec. 408.0223, Labor Code, in SECTION 2.01 of the bill (page 27, line 8, Floor Amendment No. 1) by inserting the following new subsection:

"(d) The standards adopted for preferred provider networks under Article 3.70-3C, Insurance Code, as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997, and as subsequently amended, apply as minimum standards for insurance carrier networks and are adopted by reference in this section except to the extent those standards are inconsistent with this subtitle. The advisory committee, defined in Sec. 408.0221 of this subtitle, may recommend additional standards for insurance carrier networks that are no more stringent than the additional standards that the advisory committee recommends for regional health care delivery networks pursuant to Sec. 408.0221(f) of this Chapter.

(e) The Texas Workers' Compensation Commission shall adopt rules, as necessary, to implement additional standards for insurance carrier networks."

The amendment to Floor Amendment No. 1 was read and was adopted by the following vote: Yeas 21, Nays 7, Present-not voting 1.

Yeas: Bivins, Cain, Ellis, Fraser, Gallegos, Harris, Jackson, Lindsay, Lucio, Madla, Moncrief, Nelson, Ogdan, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, West, Zaffirini.

Nays: Armbrister, Barrientos, Bernsen, Carona, Duncan, Wentworth, Whitmire.

Present-not voting: Mr. President.

Absent: Brown, Haywood.

Senator Gallegos offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 4

Amend Floor Amendment No. 1 to **HB 2600**, as follows:

(1) In SECTION 2.01 of the bill, in proposed Subsection (b), Section 408.0221, Labor Code, strike Subdivisions (4) and (5) (page 5, lines 48-51) and substitute the following:

(4) two ex officio health care provider representatives;
(5) three independent actuarial experts; and
(6) the commission's medical advisor, who shall serve as chair of the advisory committee.

(2) In SECTION 2.01 of the bill, at the end of proposed Section 408.0221, Labor Code (page 7, between lines 52 and 53), insert a new Subsection (k) to read as follows:

(k) Based on the information compiled for the annual reports submitted under Subsection (h), the regional network administrators, in consultation with actuaries with whom the regional networks contract, shall determine on an annual basis any cost savings to the operation of the workers' compensation system derived from the use of the regional networks and the amount of those savings. The commission by rule shall establish an actuarially sound procedure under which the regional networks annually refund, on a pro rata basis, to employers who obtain workers' compensation insurance coverage from insurance carriers participating in the regional networks, the amount of the savings.

The amendment to Floor Amendment No. 1 was read.

On motion of Senator Duncan, Floor Amendment No. 4 was tabled by the following vote: Yeas 17, Nays 11, Present-not voting 1.

Yeas: Armbrister, Bernsen, Bivins, Cain, Carona, Duncan, Fraser, Harris, Jackson, Lindsay, Nelson, Ogden, Shapiro, Sibley, Staples, Wentworth, Whitmire.

Nays: Barrientos, Ellis, Gallegos, Lucio, Madla, Moncrief, Shapleigh, Truan, Van de Putte, West, Zaffirini.

Present-not voting: Mr. President.

Absent: Brown, Haywood.

Senator Armbrister offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 5

Amend Floor Amendment No. 1 to **HB 2600** as follows:

(1) In SECTION 2.01 of the bill, in proposed Subsection (b), Section 408.0221, Labor Code, add a new Subdivision (5) to read as follows and renumber accordingly:

(5) one ex officio independent actuarial expert; and

(2) In SECTION 2.01 of the bill, at the end of the proposed Section 408.0221, Labor Code, insert a new subsection (k) to read as follows:

(k) Based on the information compiled for the annual reports submitted under Subsection (h), the regional network administrators, in consultation with actuaries with whom the regional networks contract, shall determine on an annual basis any cost savings to the operation of the workers' compensation system derived from the use of the regional networks and the amount of those savings.

The amendment to Floor Amendment No. 1 was read and was adopted by a viva voce vote.

Senator Van de Putte offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 6

Amend Floor Amendment No. 1 to the engrossed version of **HB 2600** as follows:

1. Add new language to Section 408.0221. REGIONAL HEALTHCARE DELIVERY NETWORKS; ADVISORY COMMITTEE, page 13, line 10: after "commission." add, "The provision of health care under this subtitle shall not apply to prescription medication or services as defined by Section 401.011(19), Subsection (e), Labor Code."

The amendment to Floor Amendment No. 1 was read.

Senator Duncan moved to table Floor Amendment No. 6.

The motion to table the amendment to the amendment was lost by the following vote: Yeas 11, Nays 15, Present-not voting 1.

Yeas: Armbrister, Bivins, Carona, Duncan, Fraser, Harris, Lindsay, Moncrief, Nelson, Sibley, Staples.

Nays: Barrientos, Bernsen, Ellis, Gallegos, Jackson, Lucio, Madla, Ogden, Shapiro, Shapleigh, Truan, Van de Putte, West, Whitmire, Zaffirini.

Present-not voting: Mr. President.

Absent: Brown, Cain, Haywood, Wentworth.

Question recurring on the adoption of Floor Amendment No. 6, the amendment to the amendment was adopted by the following vote: Yeas 18, Nays 11, Present-not voting 1.

Yeas: Barrientos, Bernsen, Cain, Ellis, Gallegos, Jackson, Lucio, Madla, Moncrief, Ogden, Shapiro, Shapleigh, Staples, Truan, Van de Putte, West, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Carona, Duncan, Fraser, Harris, Lindsay, Nelson, Sibley, Wentworth.

Present-not voting: Mr. President.

Absent: Haywood.

Senator West offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 7

Amend Floor Amendment No. 1 to **HB 2600** by striking "120 days" and replacing it with "one year" between the words "within" and "of the alleged violation." (page 22, line 16, Floor Amendment No. 1)

The amendment to Floor Amendment No. 1 was read and was adopted by a viva voce vote.

Senator Van de Putte offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 8

Amend Floor Amendment No. 1 to **HB 2600** by adding the following appropriately numbered sections and renumbering the sections of the bill accordingly:

SECTION _____. Subchapter J, Chapter 1702, Occupations Code, is amended by adding Section 1702.2285 to read as follows:

Sec. 1702.2285. INSURANCE ADJUSTERS. (a) The commission by rule shall require an adjuster who works for an insurance carrier and who is performing an investigation in connection with a workers' compensation claim or proceeding to be registered by the commission in the same manner as a private investigator.

(b) The requirement for an adjuster to register under this chapter is in addition to the requirement that the adjuster hold a license under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

(c) The commission shall adopt rules prescribing:

(1) the activities of an adjuster for which the adjuster is required to be registered under this section; and

(2) the qualifications required for issuance of a registration under this section.

SECTION _____. Section 1702.324(b), Occupations Code, is amended to read as follows:

(b) This chapter does not apply to:

(1) a manufacturer or a manufacturer's authorized distributor who sells equipment to a license holder that is used in the operations for which the person is required to be licensed;

(2) a person engaged exclusively in the business of obtaining and providing information to:

(A) determine creditworthiness;

(B) collect debts; or

(C) ascertain the reliability of information provided by an applicant for property, life, or disability insurance or an indemnity or surety bond;

(3) a person engaged exclusively in the business of repossessing property that is secured by a mortgage or other security interest;

(4) a locksmith who:

(A) does not install or service detection devices;

(B) does not conduct investigations; and

(C) is not a security services contractor;

(5) a person who:

(A) is engaged in the business of psychological testing or other testing and interviewing services, including services to determine attitudes, honesty, intelligence, personality, and skills, for preemployment purposes; and

(B) does not perform any other service that requires a license under this chapter;

(6) a person who:

(A) is engaged in obtaining information that is a public record under Chapter 552, Government Code, regardless of whether the person receives compensation;

(B) is not a full-time employee, as defined by Section 61.001, Labor Code, of a person licensed under this chapter; and

(C) does not perform any other act that requires a license under this chapter;

(7) a licensed professional engineer practicing engineering or directly supervising engineering practice under The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), including forensic analysis, burglar alarm system engineering, and necessary data collection;

(8) an employee of a cattle association who inspects livestock brands under the authority granted to the cattle association by the Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture;

(9) a landman performing activities in the course and scope of the landman's business;

(10) an attorney while engaged in the practice of law;

(11) a person who obtains a document for use in litigation under an authorization or subpoena issued for a written or oral deposition; or

(12) an admitted insurer, insurance adjuster, except as provided by Section 1702.2285, agent, or insurance broker licensed by the state, performing duties in connection with insurance transacted by that person.

SECTION _____. Section 401.011(1), Labor Code, is amended to read as follows:

(1) "Adjuster" means a person:

(A) licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code); and

(B) registered under Section 1702.2285, Occupations Code, to perform investigations in connection with a workers' compensation claim or proceeding.

SECTION _____. (a) In accordance with Section 311.031(c), Government Code, which gives effect to a substantive amendment enacted by the same legislature that codifies the amended statute, the text of Section 1702.324(b), Occupations Code, as amended by this Act, gives effect to changes made by Chapter 974, Acts of the 76th Legislature, Regular Session, 1999.

(b) To the extent of any conflict, this Act prevails over another Act of the 77th Legislature, Regular Session, 2001, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION _____. (a) The change in law made by this Act by the addition of Section 1702.2285, Occupations Code, applies only to an insurance adjuster who performs an investigation for an insurance carrier in connection with a workers' compensation claim or proceeding on or after March 1, 2002.

(b) The Texas Commission on Private Security shall adopt rules under Section 1702.2285, Occupations Code, as added by this Act, not later than December 31, 2001.

The amendment to Floor Amendment No. 1 was read.

On motion of Senator Van de Putte and by unanimous consent, Floor Amendment No. 8 was withdrawn.

Senator Van de Putte offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 9

Amend Floor Amendment No. 1 to **HB 2600** by adding the following appropriately numbered section and renumbering the sections of the bill accordingly:

SECTION _____. Subchapter C, Chapter 401, Labor Code, is amended by adding Section 401.025 to read as follows:

Sec. 401.025. OBLIGATIONS OF EMPLOYERS AND INSURANCE CARRIERS. (a) Under this subtitle, an employer has the duty to:

(1) inform each employee of the benefits, both monetary and medical, to which the employee is entitled and to assist an injured employee in submitting required forms;

(2) inform an employee of the right to medical care that is reasonable and necessary to treat the employee's work-related injury or illness for the rest of the employee's life;

(3) inform an injured employee of the right to choose the employee's doctor and of the right to change the treating doctor;

(4) inform an employee of the right to legal representation and of the right to assistance from the commission's ombudsman;

(5) inform an employee of the right to the confidentiality of records;

(6) refrain from engaging in retaliatory action against an employee who asserts the employee's rights under this subtitle;

(7) provide information and assistance to an employee in the employee's language of choice; and

(8) provide information to an employee orally if the employee is unable to read or to comprehend the employee's rights.

(b) Under this subtitle, an insurance carrier has the duty to:

(1) disclose the carrier's identity for the purpose of gathering data or information pertinent to an injured employee's claim;

(2) notify an injured employee of the employee's right to be represented by an attorney to represent the employee's interests if the carrier is represented by an attorney at any hearing or trial;

(3) disclose any investigation surveillance to the injured employee and the commission;

(4) maintain in a permanent file the name and license or registration number of any investigator and to make that information available to the employee at a hearing or conference;

(5) ensure that any investigation by the carrier is performed by an investigator holding the proper license or registration from the Texas Commission on Private Security; and

(6) provide health care without making:

(A) any financial incentives to health care providers; and

(B) a payment to a physician or other health care provider that serves as an inducement to limit medically necessary services.

(c) The commission shall report a violation of Subsection (b)(5) to the Texas Commission on Private Security.

The amendment to Floor Amendment No. 1 was read.

On motion of Senator Van de Putte and by unanimous consent, Floor Amendment No. 9 was withdrawn.

Senator Barrientos offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 10

Amend Floor Amendment No. 1 to **HB 2600** as follows:

1. Amend **HB 2600** Section 408.022(e) and before the phrase "the date on which employee begins to receive," insert the following: "the 60th day after."

2. Amend **HB 2600** Section 408.022(e) and strike "14th" and insert "60th."

The amendment to Floor Amendment No. 1 was read.

Question—Shall Floor Amendment No. 10 to Floor Amendment No. 1 to **HB 2600** be adopted?

AT EASE

The Presiding Officer, Senator Harris in Chair, at 5:05 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

IN LEGISLATIVE SESSION

Senator Brown at 5:15 p.m. called the Senate to order as In Legislative Session.

Question—Shall Floor Amendment No. 10 to Floor Amendment No. 1 to **HB 2600** be adopted?

On motion of Senator Barrientos and by unanimous consent, Floor Amendment No. 10 was withdrawn.

Senator Barrientos offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 11

Amend Floor Amendment No. 1 to **HB 2600** as follows:

1. Amend **HB 2600** Section 408.0222(e) and before the phrase "the date on which employee begins to receive," insert the following: "the 60th day after." on page 20, line 13.

2. Amend **HB 2600** Section 408.0222(e) and strike "14th" and insert "60th." on page 20, line 15.

The amendment to Floor Amendment No. 1 was read.

On motion of Senator Duncan, Floor Amendment No. 11 was tabled by the following vote: Yeas 21, Nays 9, Present-not voting 1.

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

Nays: Barrientos, Ellis, Gallegos, Lucio, Madla, Shapleigh, Truan, Van de Putte, Zaffirini.

Present-not voting: Mr. President.

Question recurring on the adoption of Floor Amendment No. 1 as amended, the amendment as amended was adopted by a viva voce vote.

RECORD OF VOTE

Senator Truan asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 1 as amended to **HB 2600**.

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

HB 2600 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2600 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 2600** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 5, Present-not voting 1.

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

Nays: Barrientos, Gallegos, Madla, Truan, Van de Putte.

Present-not voting: Mr. President.

The bill was read third time and was passed by the following vote: Yeas 25, Nays 5, Present-not voting 1. (Same as previous roll call)

MESSAGE FROM THE HOUSE**HOUSE CHAMBER**

Austin, Texas

May 18, 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:

SB 189, Relating to the authority of a juvenile justice alternative education program to obtain a waiver regarding required days of operation.

(Amended)

SB 350, Relating to wage rates paid by or on behalf of certain school districts on public works projects.

(Amended)

SB 377, Relating to a local option election for the sale of beer and wine in certain cities or towns located in more than one county.

(Amended)

SB 393, Relating to the Uniform Electronic Transactions Act and electronic records.

(Amended)

SB 430, Relating to creation of the Texas School Safety Center.

(Amended)

SB 439, Relating to the match requirement for the receipt of state funds by certain organizations providing chemical dependency treatment services.

SB 536, Relating to compensation to persons wrongfully imprisoned.
(Committee Substitute/Amended)

SB 538, Relating to a study of duties performed by public school counselors.
(Amended)

SB 545, Relating to the venue for a suit to recover damages to a road or highway caused by operating an overweight vehicle and transporting oversize or overweight commodities.

SB 554, Relating to grants by the Texas Workforce Commission to assist economically disadvantaged persons enrolled in qualified postsecondary career education programs.

SB 643, Relating to the practice of acupuncture.
(Amended)

SB 654, Relating to certain licensing information required for registration as a sex offender.
(Amended)

SB 731, Relating to the liability of an officer of a nonprofit corporation.

SB 766, Relating to the processing and sale of meat and poultry products; providing penalties.
(Amended)

SB 776, Relating to the accrual of interest on child support.
(Committee Substitute/Amended)

SB 779, Relating to the creation of an agricultural lien.
(Committee Substitute)

SB 888, Relating to enforcement of motor vehicle weight restrictions.

SB 889, Relating to the operation of certain overweight vehicles on a highway; providing penalties.
(Amended)

SB 925, Relating to the procurement powers of certain navigation districts and port authorities.

SB 961, Relating to salary supplements by a county or a municipality for child and adult protective services workers.
(Amended)

SB 965, Relating to sale of wine by the holder of a winery permit.
(Amended)

SB 1047, Relating to the expunction or clarification of certain criminal history record information.
(Amended)

SB 1268, Relating to a surety bond obtained for a public project and executed by a surety company.
(Amended)

SB 1467, Relating to coverage for tests for the detection of colorectal cancer under certain health benefit plans.

(Amended)

SB 1536, Relating to the establishment of pilot projects to demonstrate the applications of technology in providing certain services under the medical assistance program.

(Amended)

SB 1574, Relating to an exemption from ad valorem taxation of raw cocoa and green coffee that is held in Harris County.

SB 1797, Relating to an exemption from the licensure provisions of The Texas Engineering Practice Act for certain research or instructional work.

(Amended)

SJR 37, Proposing a constitutional amendment authorizing the issuance of general obligation bonds or notes to provide financial assistance to counties for roadway projects to serve border colonias.

(Committee Substitute)

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

GUESTS PRESENTED

Senator Shapleigh was recognized and introduced to the Senate students from Del Valle High School in El Paso.

The Senate welcomed its guests.

PERSONAL PRIVILEGE STATEMENT

On motion of Senator Truan and by unanimous consent, the following personal privilege statement by Senator Wentworth was ordered reduced to writing and printed in the *Senate Journal*:

Mr. President, the Lieutenant Governor indicated the day before yesterday that we'd start meeting at 9:00 a.m. with the consent of the Senate in order for us not to have to meet on Saturdays or Sundays. He also indicated that Saturday was the last day that a bill could get over to the House and actually get out of the House. That means that the Senate redistricting bill which came out of the Senate redistricting committee isn't going to be called up. I've only made one personal privilege statement before in the nearly decade that I've been here and that was once again on a constitutional matter. I don't believe that the Senate should routinely suspend the Constitution as we do on bills. I think we ought to follow the rules just like the House does. The House has second reading on one day and third reading on another. I don't see any justification for our doing business the way we do and I made a personal privilege speech on that a couple of years ago. So, I don't do this often, but because of some of the mail I've gotten and some of the discussion over the last few weeks based on my chairmanship

of the redistricting committee, I'd like to give a little history, if I might, about my personal political background.

In 1956 my father was Treasurer of the Young Democrats of Bexar County. He resigned as treasurer of the Young Democrats of Bexar County and filed as a Republican for county commissioner in Bexar County because he didn't believe conservative principles and philosophy had a future in the Democratic Party, and he believed that there should be a competitive two-party political system in this state. Of course there were no Republicans in Bexar County in 1956. My mother voted for him. I wasn't old enough to, and he lost. In 1962 he ran for the Texas House of Representatives as a Republican. His opponent had been charged with attempted murder and his profession was professional gambler, but he was a Democrat, and back in 1962 that was good enough to get elected, so my father lost. In 1974 my father ran for the State Senate and I ran that year with him for the Texas House. We lost together in 1974. My father passed away in 1975. I then ran in 1976 for county commissioner, which was the first position he ever ran for 20 years earlier, and I got elected as a Republican. When I went down to the courthouse on New Year's Day of 1977, I counted all the elected officials in our Bexar County courthouse. There were a total of 38 elected officials at our courthouse, 37 Democrats and me. I didn't have anybody to eat lunch with the first two years of my four-year term. I recruited a young lawyer to run for district clerk, so that I would have a lunch partner, candidly, and Tom Rickhoff was elected in 1978, and because of that I asked him to be best man in my wedding when I got married in 1981. I say that, I recount those experiences, because it took a father and a son 20 years and five races between them, before one of us was successful. I helped build the Republican Party in my part of the state. To have my credentials challenged by people ignorant of my family history, my loyalty to my party challenged, because I accepted an assignment and tried to do my best to get a bill out of here, is something that has been painful and that I regret in this process, but I want people to understand that.

I want you to understand, too, my perspective on redistricting. Forty years ago in 1961, when I was an undergraduate student at Texas A&M, I had the opportunity, and, in fact, because it was a class day and I decided it would be more fun to drive to the Capitol and lobby a bill, I left the A&M campus and came down here, because Senator Moore had introduced a bill to change the name of my school. He wanted to change it from the Agricultural and Mechanical College of Texas to Texas State University and Agricultural Mechanical College. I didn't think that was a good idea. My roommate didn't either, so we drove down here to see the Governor of Texas. We thought we could do that. Actually forty years ago, it was a slower time, you could, and my roommate and I actually got in to see Governor Daniel and we told him we didn't like this bill. He was really polite and instead of telling us what he could have told us, justifiably, was let me get this straight, young men, this is a bill that's been introduced, no hearing in the Senate, no hearing in the House, hadn't passed any committee, nowhere near my desk, you know, what are you doing in my office? But he didn't say any of that. He told us what we ought to do, we ought to go see Senator Moore, to see if we could change his mind. Having said that, he said, you know, I know Senator Moore, though, and my best guess is you won't be able to change his mind, so

you ought to find somebody else who graduated from Texas A&M who is a Member of the Texas Senate and see if they can help you. So we did come see Senator Moore. We called him off the floor; he came off the floor right back there. I had never met a state Senator before in my life. He came off the floor, we visited with him, and he told us that we were two young kids that didn't understand history, that these land grant colleges were created by the Morrill Act in Congress and that all the A&Ms essentially had changed their name to State: Oklahoma State, Kansas State, Michigan State, Ohio State, and he was just trying to have Texas A&M do the same thing. Anyway, we got another Senator, Bob Baker from Houston, to help us. We killed that bill in 1961, and in 1963 Senator Moore came back himself and introduced the bill that changed the name to Texas A&M University. The reason I point out 1961 is, that was a redistricting year. Even though I was just a junior at Texas A&M then, I was aware that redistricting was a major issue in this building 40 years ago. In 1971, 30 years ago, I was back as a law student, president of my law school student body, lobbying for a bill that would permit law students to actually go into court during their third year and try cases. Before then, it was illegal. Law students were not allowed in courtrooms because they weren't licensed to practice, and we persuaded Senator Herring, here in Travis County, and then State Representative, now County Judge of San Antonio, Nelson Wolff, to carry a bill that permitted that practice, and Governor Preston Smith signed the bill. But when I was here in 1971, I was aware that, once again, redistricting was the major issue confronting the Texas Legislature that year. In 1981, I was a county commissioner. I was here regularly before the House County Affairs Committee, before the Senate Intergovernmental Relations Committee, lobbying on behalf of county governments around the state, and, once again, the principal focus of the Legislature then was redistricting. Ten years ago, I was a Member of the Texas House of Representatives and played virtually no role in redistricting. I was in the minority party, a distinct minority party. Republicans in the House and Senate had virtually no impact on what happened around here. I carried an amendment that came closer than any other to being adopted in the House, but it was defeated as well, and no amendments that were offered in the House ten years ago were adopted. As a result of that experience, in 1991, I introduced resolutions, as most of you well know, in 1993, 1995, 1997, 1999, and this year, to change the way we do business around here. I believe most Texans, if given the choice, out of nearly 21 million of us in the state, to turn over the responsibility of drawing our boundary lines to the 181 least objective, most self-interested people, to draw their own boundary lines. It just, to me, doesn't make sense, and, I don't think to most Texans it makes sense, when they think about it. Twelve other states have already changed that system. I believe that we should have done that, but we didn't, it's still in the Constitution that we should do it.

At the beginning of this session, Lieutenant Governor Ratliff suggested that I take the chairmanship of the Senate redistricting committee. In fact, it was my first choice, so it matched very well. He appointed a very balanced committee that I was very proud to work with. It, in fact, mirrors the constitutional amendment that I have repeatedly introduced: eight Members, evenly divided between Republicans and Democrats. We had a very bipartisan staff. As the Republican chairman, I hired as the general counsel on the staff the immediate past general counsel of the Republican Party of Texas, to

ally fears of some Republicans that I would, somehow, not be Republican enough. He had all sorts of redistricting experience. I then went to the four Democratic Members of the committee and gave each of them veto power over whatever lawyer was selected to be the counsel to the committee. Those four Senators picked a very able lawyer here in Austin, Mike Hemer, who'd had redistricting experience 20 and 10 years ago. They worked very effectively together. The entire staff has been ably led, competent, conscientious, dedicated, lots of overtime hours. We've heard this session in this chamber, in my judgment, very eloquent arguments by Senator Ellis that this body is a deliberative body and that we should debate the major issues of the day. Senator Ogden agreed with him and, as I remember, said, while we're doing that, we shouldn't be one-sided, we ought also to debate the defense of marriage act, and, you know what, we did. We suspended the rule and we debated both those issues, which I think was appropriate. I've got to point out, though, nowhere in the Texas Constitution does it say that this body should debate hate crimes or the defense of marriage act. The Texas Constitution, though, does say that the Texas Legislature shall, shall, mandatory, not may, not should, shall, after every United States decennial census, reapportion Senatorial and Legislative districts. I have, and have had for nearly two weeks, a bipartisan majority of this body to debate this bill. I don't have two-thirds; I'm two votes short, I guess. If I'd been permitted to make the motion, maybe two that had not yet committed would have actually had to cast their votes, and might have voted with me. We'll never know. I wish that that opportunity had happened.

Let me talk a minute about the bill that the committee did pass. It passed 7-to-1 out of committee. All four Republicans voted for it, three Democrats voted for it, one Democrat voted against it, and I'd kind of like to accurately frame this discussion, since there's been some attempt to spin the choices we had. The statement's been made that Wentworth was carrying the Democratic plan and Senator Sibley was carrying the Republican plan. I dispute that. In fact, I went to the chairman of the Democratic Caucus, and he said, we've elected not to propose a Democratic plan, because we know that if it's a hard-core Democratic plan, we can't put together a coalition of Democrats and Republicans alike. So, we went to work in the committee to put together a plan that was not hard-core Democrat or hard-core Republican, that would, we hoped, attract enough votes to pass a bill. And what we did was to craft a plan that has 16 solid Republican districts, 12 solid Democratic districts, with three swing districts currently held by Democrats, but with a base of over 50 percent Republican voters, using the Rylander/Hobby race in 1998, which I believe is the one that most people have used as a fair delineation between Republicans and Democrats. Now, some Members are not happy about the plan because it changes their district too much. They lost too many people, they gained too many people. I just want to remind some of you, that in the process, there was no favoritism in that process. I lost, in the drawing of those lines, ten counties. I lost 382,000 people out of my Senate district and I picked up 197,000 new people, including one whole county with nearly 100,000 people.

The cost of all this was over a quarter of a million dollars, in the interim with the nine hearings that were held all over the state, with the staff of two lawyers, and a number of other administrative people. I think it's been a valiant effort. I think it's been the right thing for us to do. I just took the same oath that all of you took, and that was to uphold both the United States and the Texas constitutions. This provision is in the

Texas Constitution. I think we've missed a real opportunity to debate, at least, whether we voted it up or down, at least debate a bipartisan bill that enjoys a majority of this body's support. So, in conclusion, Mr. President, I just say, somewhat sadly, that I don't believe this is a very proud day in the history of the Texas Senate. Thank you, Mr. President.

WENTWORTH

PERSONAL PRIVILEGE STATEMENT

Senator Barrientos submitted the following personal privilege statement regarding **SB 499**:

Mr. President and fellow Members of the Senate, it is unfortunate that a minority of the Senate has chosen to use procedural maneuvers to prevent consideration of **SB 499**, the Senate redistricting bill. Through the actions of a few Senators, a clear majority of the Senate, including Members from both political parties and every African American and Hispanic Senator, has been denied the opportunity to determine the composition of the Senate districts that will provide representation for their own communities.

It is important to note that every Member of the Senate who has said they would vote to block consideration of **SB 499** is Anglo and Republican. Many of the Members who have said they would vote to block consideration of **SB 499** are the same Senators who have worked informally throughout the redistricting process with bipartisan "regional" groups to develop redistricting plans that reflect the interests of their communities. To a large degree, those plans are incorporated into **SB 499**. For that reason, it is clear that many Members who are blocking consideration of **SB 499** are being intensely pressured by those who put narrow partisan political interests ahead of the best interests of the people of Texas.

SB 499, the plan developed by Chairman Wentworth, offered the only real opportunity to all Senators to be involved in developing a redistricting plan. The **SB 499** "working plan" was put together with input from African American Senators, Hispanic Senators, Democratic Senators, and Republican Senators.

Although I do not agree with all the details in **SB 499**, it provides a real opportunity for a bipartisan plan that meets the requirements of the Voting Rights Act and reflects communities of interest as best determined by the Senators who live there and the testimony of those who appeared before the committee.

Thus, the failure to consider **SB 499** has denied many Texans their best opportunity to be represented in developing a Senate redistricting plan. Should this action result in districts being drawn by the Legislative Redistricting Board, it is important to note that every "LRB" member is Anglo, and that three of the five LRB members are Republicans elected statewide. This stands in stark contrast to the diverse membership of the legislature, who are "closer to the people" by virtue of their election by voters from communities all across our great state.

It is my hope that our esteemed President, Senator Ratliff, would work as a member of the LRB to adopt a plan that resembles **SB 499**, a plan developed openly and fairly with the involvement of all Senators. As a matter of respect for the Senate, we should ask no less.

BARRIENTOS

PERSONAL PRIVILEGE STATEMENT

Senator Ellis was recognized to address the Senate on a matter of personal privilege.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 65**

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas
May 17, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 65** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

MONCRIEF

CARONA

NELSON

BERNSEN

SIBLEY

On the part of the Senate

B. TURNER

MAXEY

WOHLGEMUTH

HAWLEY

GRAY

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the regulation of telepharmacy as a method to dispense drugs.

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

SECTION 1. Subchapter C, Chapter 562, Occupations Code, is amended by adding Section 562.110 to read as follows:

Sec. 562.110. TELEPHARMACY SYSTEMS. (a) In this section, "telepharmacy system" means a system that monitors the dispensing of prescription drugs and provides for related drug use review and patient counseling services by an electronic method, including the use of the following types of technology:

(1) audio and video;

(2) still image capture; and

(3) store and forward.

(b) A Class A or Class C pharmacy located in this state may provide pharmacy services, including the dispensing of drugs, through a telepharmacy system in a facility that is not at the same location as the Class A or Class C pharmacy.

(c) A telepharmacy system is required to be under the continuous supervision of a pharmacist as determined by board rule. To qualify as continuous supervision for a telepharmacy system, the pharmacist is not required to be physically present at the site of the telepharmacy system. The pharmacist shall supervise the system electronically by audio and video communication.

(d) A telepharmacy system may be located only at a health care facility in this state that is regulated by this state or the United States.

(e) The board shall adopt rules regarding the use of a telepharmacy system under this section, including:

(1) the types of health care facilities at which a telepharmacy system may be located, which must include the following facilities:

(A) a clinic designated as a rural health clinic regulated under 42 U.S.C. Section 1395x(aa), as amended; and

(B) a health center as defined by 42 U.S.C. Section 254b, as amended;

(2) the areas that qualify under Subsection (f);

(3) recordkeeping requirements; and

(4) security requirements.

(f) A telepharmacy system may not be located in a community in which a Class A or Class C pharmacy is located as determined by board rule. If a Class A or Class C pharmacy is established in a community in which a telepharmacy system has been located under this section, the telepharmacy system may continue to operate in that community.

SECTION 2. Section 57.042, Utilities Code, is amended by adding Subdivision (12) to read as follows:

(12) "Telepharmacy system" means a system that monitors the dispensing of prescription drugs and provides for related drug use review and patient counseling services by an electronic method, including the use of the following types of technology:

(A) audio and video;

(B) still image capture; and

(C) store and forward.

SECTION 3. Section 57.047(a), Utilities Code, is amended to read as follows:

(a) The board may award a grant to a project or proposal that:

(1) provides equipment and infrastructure necessary for:

(A) distance learning;

(B) an information sharing program of a library; [or]

(C) telemedicine services; or

(D) a telepharmacy system;

(2) develops and implements the initial or prototypical delivery of a course or other distance learning material;

(3) trains teachers, faculty, librarians, or technicians in the use of distance learning or information sharing materials and equipment;

(4) develops a curriculum or instructional material specially suited for telecommunications delivery;

(5) provides electronic information; or

(6) establishes or carries out an information sharing program.

SECTION 4. Section 58.253(a), Utilities Code, is amended to read as follows:

(a) On customer request, an electing company shall provide private network services to:

(1) an educational institution;

(2) a library;

(3) a nonprofit telemedicine center;

- (4) a public or not-for-profit hospital;
- (5) a project funded by the telecommunications infrastructure fund under Subchapter C, Chapter 57, except for a telepharmacy system; or
- (6) a legally constituted consortium or group of entities listed in this subsection.

SECTION 5. (a) This Act takes effect September 1, 2001.

(b) Not later than February 28, 2002, the Texas State Board of Pharmacy shall adopt the rules required by Section 562.110, Occupations Code, as added by this Act. Pharmacy services may not be provided through a telepharmacy system under Section 562.110, Occupations Code, as added by this Act, until the Texas State Board of Pharmacy adopts those rules.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 555

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas
May 18, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 555** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ELLIS	JUNELL
BIVINS	GALLEGO
SIBLEY	WEST
VAN DE PUTTE	CHRISTIAN
ZAFFIRINI	HOCHBERG
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to a college savings plan for qualified higher education expenses.

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

SECTION 1. Chapter 54, Education Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. HIGHER EDUCATION SAVINGS PLAN

Sec. 54.701. DEFINITIONS. In this subchapter:

(1) "Beneficiary" means an individual designated as the individual whose qualified higher education expenses are expected to be paid from the savings trust account.

(2) "Board" means the Prepaid Higher Education Tuition Board.

(3) "Eligible educational institution" has the meaning assigned by Section 529, Internal Revenue Code of 1986, as amended.

(4) "Financial institution" means a bank, trust company, savings and loan association, credit union, broker-dealer, mutual fund, insurance company, or other similar financial institution authorized to transact business in this state.

(5) "Nonqualified withdrawal" means a withdrawal from a savings trust account other than:

(A) a qualified withdrawal;

(B) a withdrawal made as the result of the death or disability of the beneficiary of the account; or

(C) a withdrawal made due to a scholarship or to an allowance or payment described by Section 135(d)(1)(B) or (C), Internal Revenue Code of 1986, as amended, received by the beneficiary to the extent the amount of the withdrawal does not exceed the amount of the scholarship, allowance, or payment, in accordance with federal law.

(6) "Plan" means the higher education savings plan established under this subchapter.

(7) "Plan manager" means a financial institution under contract with the board to serve as plan administrator.

(8) "Qualified higher education expenses" means tuition, fees, or expenses for books, supplies, and equipment required for the enrollment or attendance of an individual at an eligible educational institution, the costs of room and board, and any other higher education expenses that may be permitted under Section 529, Internal Revenue Code of 1986, as amended.

(9) "Qualified withdrawal" means a withdrawal from a savings trust account to pay the qualified higher education expenses of the beneficiary of the account.

(10) "Savings trust account" means an account established through the plan by an individual under this subchapter on behalf of a beneficiary in order to apply distributions from the account toward qualified higher education expenses at eligible educational institutions.

(11) "Savings trust agreement" means the agreement between an individual establishing a savings trust account and the board.

Sec. 54.702. POWERS AND DUTIES OF BOARD. (a) The board shall:

(1) develop and implement the plan in a manner consistent with this subchapter;

(2) select the financial institution or institutions to serve as plan manager; and

(3) adopt rules governing withdrawal of money from a savings trust account and develop policies and penalties for nonqualified withdrawals.

(b) The board may seek rulings and other guidance from the United States Department of the Treasury, the Internal Revenue Service, and the Securities and Exchange Commission relating to the plan as necessary for proper implementation and development of the plan. The board shall make changes to the plan as necessary for savings trust account owners and beneficiaries of the plan to obtain or maintain federal income tax benefits or treatment provided by Section 529, Internal Revenue Code of 1986, as amended, and exemptions under federal securities laws.

(c) The board shall collect administrative fees and service charges in connection with any agreement, contract, or transaction relating to the plan in amounts not exceeding the cost of establishing and maintaining the plan.

(d) A savings trust agreement must be developed and approved by the board. The board shall review for compliance with applicable law and must approve in advance any informational materials that a plan manager provides to participants or potential participants in the plan.

(e) The board shall adopt a policy to prevent contributions to an account on behalf of a beneficiary in excess of those necessary to pay the qualified higher education expenses of the beneficiary.

(f) The board shall monitor contributions to and withdrawals from the plan and each plan account to ensure that any applicable limits on contributions or withdrawals are not exceeded.

(g) The board shall prepare and file statements and information returns relating to accounts to the extent required by federal or state tax law.

Sec. 54.703. OPERATION OF PLAN; ACCOUNTS HELD IN TRUST. (a) The board shall administer a higher education savings plan to enable individuals to save money for the qualified higher education expenses of an individual by establishing a savings trust account in the plan.

(b) Money contributed to a savings trust account and earnings on the account are held in trust by the board for the sole benefit of the account owner and beneficiary.

Sec. 54.704. SELECTION OF FINANCIAL INSTITUTION AS PLAN MANAGER. (a) The board shall contract with one or more financial institutions to serve as plan manager and to invest the money in savings trust accounts. The board shall ensure that investments by a plan manager are made with the judgment and care that persons of prudence, discretion, and intelligence exercise in the management of the property of another, not in regard to speculation but in regard to the permanent disposition of funds, considering the probable income as well as the probable safety of capital.

(b) The board shall solicit proposals from financial institutions to serve as plan managers.

(c) The board shall select a plan manager or managers from among bidding financial institutions that demonstrate the most advantageous combination to account owners and beneficiaries, based on the following factors:

(1) financial stability and integrity;

(2) the ability of the financial institution, directly or through a subcontract, to satisfy recordkeeping and reporting requirements;

(3) the financial institution's strategy for promoting the plan and the investment that the financial institution is willing to make to promote the plan;

(4) the historic ability of the portfolios or investment strategies to be used by the financial institution to track the estimated costs of higher education as calculated by the United States Department of Education;

(5) the fees, if any, proposed to be charged to account owners for maintaining accounts;

(6) the minimum contributions that the financial institution will require and the willingness of the financial institution to accept contributions through payroll deduction plans or systematic deposit plans; and

(7) any other proposed benefits to this state or to its residents.

(d) The board may require that any financial institution selected provide several investment options to account owners, taking into consideration the age of the beneficiary and the number of years remaining until likely enrollment at an eligible educational institution. To the extent permitted by federal law, the investment options may include mutual funds, fixed annuities, variable annuities, and variable life insurance policies.

Sec. 54.705. DUTIES OF PLAN MANAGER. (a) A plan manager shall:

(1) take all actions required to keep the plan in compliance with this subchapter, to ensure that the plan qualifies as a qualified state tuition program under Section 529, Internal Revenue Code of 1986, as amended, and to ensure that the plan is exempt from registration under federal securities law;

(2) keep adequate and separate records of each savings trust account and provide the board with the information necessary to prepare the reports required by Section 529, Internal Revenue Code of 1986, as amended, or to file those reports on behalf of the board;

(3) compile necessary information for statements to account owners and statements required by federal or state tax law and provide those compilations to the board; and

(4) provide representatives of the board with access to the books and records of the manager as necessary to determine compliance with the plan manager contract.

(b) A plan manager shall hold all savings trust accounts in trust as authorized by the board in the plan manager contract. A plan manager shall make investments according to the standard provided by Section 54.704(a).

(c) A plan manager shall develop a strategy to promote the plan and, on approval by the board, promote the plan according to that strategy.

(d) A plan manager may provide for any financial institution to market the plan on its behalf and to provide account services to an individual who opens or owns a savings trust account administered by the plan manager. A financial institution that markets the plan or provides account services under this subsection may charge a fee or commission for those services.

Sec. 54.706. CONTRACT BETWEEN BOARD AND PLAN MANAGER. (a) A contract between the board and a financial institution to act as a plan manager under this subchapter must be for a term of at least five years and may be renewable.

(b) If the contract is not renewed, the following conditions apply at the end of the term of the contract, so long as applying the conditions does not disqualify the plan as a qualified state tuition program under Section 529, Internal Revenue Code of 1986, as amended:

(1) the board shall continue to maintain the plan at the financial institution;

(2) accounts previously established at the financial institution may not be terminated, except as provided by Subdivision (5) or Subsection (c);

(3) additional contributions may be made to the accounts;

(4) new accounts may not be opened with that financial institution; and

(5) if the board determines that continuing the accounts at that financial institution is not in the best interest of the account owners, the accounts may be transferred to another financial institution acting as a plan manager.

(c) The board may cancel a plan manager contract with a financial institution for a violation of the contract or a provision of this subchapter by the financial institution

at any time. If a contract is terminated under this subsection, the board shall take custody of accounts held at that financial institution and shall promptly seek to transfer the accounts to another financial institution acting as a plan manager and into investment instruments as similar to the original investment instruments as possible.

Sec. 54.707. SAVINGS TRUST ACCOUNTS. (a) An individual may open a savings trust account to save money for the payment of the qualified higher education expenses of a beneficiary. The individual who opens the account is the owner of the account. The owner of the account may also be the beneficiary.

(b) An individual may open an account by entering into a savings trust agreement with the board as prescribed and approved by the board and making the minimum contribution required by the plan manager selected by the individual to open an account.

(c) A savings trust agreement must include the following terms:

(1) the name and address of the savings trust account owner;

(2) the name, address, and date of birth of the beneficiary on whose behalf the account is opened;

(3) the maximum and minimum contributions allowed to the account;

(4) provisions for withdrawals, refunds, transfers, and any penalties;

(5) terms and conditions for a substitution of the beneficiary originally named;

(6) terms and conditions for termination of the account, including any refunds, withdrawals, or transfers, and applicable penalties, and the name of the person or persons entitled to terminate the account;

(7) all other rights and obligations of the account owner, the plan manager, and the board; and

(8) any other terms and conditions the board considers necessary or appropriate, including those necessary to conform the savings trust account to the requirements of Section 529, Internal Revenue Code of 1986, as amended, or other applicable federal law.

(d) An account owner may change the designated beneficiary of an account as provided by Section 529, Internal Revenue Code of 1986, as amended, in accordance with procedures established by the board.

Sec. 54.708. CONTRIBUTIONS AND WITHDRAWALS; PENALTY FOR NONQUALIFIED WITHDRAWAL. (a) Contributions to a savings trust account may be made only in cash or by electronic funds transfer. An employee of the state or a political subdivision of the state may make contributions to a savings trust account by payroll deductions made by the appropriate officer of the state or political subdivision.

(b) An account owner may withdraw all or part of the balance of an account on prior notice as authorized by board rules. The board shall adopt rules governing the determination whether a withdrawal is a qualified withdrawal or a nonqualified withdrawal. The rules may require an account owner requesting to make a qualified withdrawal to provide a certification of qualified higher education expenses.

(c) In the case of a nonqualified withdrawal from an account, an amount equal to 10 percent of the portion of the withdrawal constituting income as determined in accordance with Section 529, Internal Revenue Code of 1986, as amended, shall be withheld as a penalty.

(d) The amount of the penalty prescribed by Subsection (c) may be increased if the board determines that the increased penalty is necessary to constitute a greater than de minimis penalty for purposes of qualifying the plan as a qualified state tuition program under Section 529, Internal Revenue Code of 1986, as amended.

(e) The amount of the penalty prescribed by Subsection (c) may be decreased by board rule if the board determines that:

(1) the amount of the penalty prescribed by Subsection (c) is greater than required to constitute a greater than de minimis penalty for purposes of qualifying the plan as a qualified state tuition program under Section 529, Internal Revenue Code of 1986, as amended; and

(2) the penalty together with other revenue generated under this subchapter is producing more revenue than required to cover the costs of operating the plan and to recover any prior costs not previously recovered.

(f) Penalties collected under this subchapter shall be used to cover costs of administering this subchapter, and any excess shall be treated as earnings of the savings trust accounts in the plan.

Sec. 54.709. ADMINISTRATION OF ACCOUNTS. (a) A plan manager shall provide separate accounting for each savings trust account.

(b) An account owner or beneficiary may not direct the investment of any contributions to or earnings on an account.

(c) If the board terminates the contract of a financial institution to act as a plan manager and accounts must be transferred from that financial institution to another financial institution, the board shall select the financial institution to which the balances of the accounts are transferred.

(d) A savings trust agreement must provide that, if after a specified period the savings trust agreement has not been terminated and the beneficiary's rights in the account have not been exercised, the board, after making reasonable efforts to contact the owner and beneficiary of the account or their agents, shall report the unclaimed money in the account to the comptroller.

(e) Money in a savings trust account is exempt from attachment, execution, and seizure for the satisfaction of debt or liability of an account owner or beneficiary.

(f) A savings trust account may not be assigned for the benefit of creditors, used as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge.

(g) A distribution from an account to any individual or for the benefit of any individual during a calendar year shall be reported to the Internal Revenue Service and to the account owner or the beneficiary to the extent required by federal law.

(h) A plan manager shall provide an annual statement to each account owner not later than the January 31 after the end of each calendar year and may provide statements more frequently than annually. A statement must identify the contributions made during the reporting period, the total contributions made through the end of the reporting period, the value of the account at the end of the reporting period, withdrawals made during the reporting period, and any other information the board requires.

(i) Notwithstanding Subsection (b), if Section 529, Internal Revenue Code of 1986, as amended, is amended to permit an account owner to direct the investment of a contribution to or an account balance in a qualified state tuition program, the board in each subsequent plan manager contract shall provide that each plan manager must

provide a savings trust account owner with the ability to direct the investment of a contribution to the account or the balance in the account among a wide variety of investment options.

Sec. 54.710. PLAN LIMITATIONS. (a) Nothing in this subchapter or in any savings trust agreement entered into under this subchapter may be construed to:

(1) give a beneficiary any rights or legal interest with respect to a savings trust account unless the beneficiary is the account owner;

(2) guarantee that amounts saved under the plan will be sufficient to cover the qualified higher education expenses of a beneficiary; or

(3) establish state residency for tuition or other purposes for a beneficiary because of the designation as a beneficiary.

(b) Nothing in this subchapter or in any savings trust agreement entered into under this subchapter may be construed to create any obligation of the state, any agency or instrumentality of the state, or a plan manager to guarantee for the benefit of an account owner or beneficiary:

(1) the return of any amount contributed to an account;

(2) the rate of interest or other return on an account;

(3) the payment of interest or other return on an account; or

(4) tuition rates or the cost of related education expenditures.

(c) The board by rule shall require that every savings trust agreement, deposit slip, and other similar document used in connection with a contribution to an account clearly indicate that the account is not insured by this state and that neither the principal deposited nor the investment return is guaranteed by this state.

Sec. 54.711. NO PROMISE OF ADMISSION, ENROLLMENT, OR GRADUATION. The opening or maintenance of a savings trust account does not promise or guarantee that a beneficiary of the account will:

(1) be admitted to any eligible educational institution;

(2) be admitted to a particular eligible educational institution;

(3) be allowed to continue enrollment at an eligible educational institution after admission; or

(4) receive a degree or certificate from an eligible educational institution.

Sec. 54.712. RESIDENCY NOT REQUIRED. A savings trust account owner or beneficiary is not required to be a resident of this state.

Sec. 54.713. POLICIES FOR PROMOTION AND DISCLOSURE OF INFORMATION. The board shall adopt policies for promotion of the plan and the disclosure of plan information to savings trust account owners and beneficiaries in a manner consistent with this subchapter and the requirements of Section 529, Internal Revenue Code of 1986, as amended, to ensure that:

(1) promotional material and plan information disclose that no money invested in the plan is insured by this state and that neither the principal deposited nor the investment returned is guaranteed by this state; and

(2) any fees imposed under this subchapter are disclosed in promotional material and plan information provided to the public and to account owners and beneficiaries.

Sec. 54.714. CONFIDENTIALITY OF RECORDS. (a) Except as otherwise provided by this section, all information relating to the plan is public and subject to disclosure under Chapter 552, Government Code.

(b) Information relating to a beneficiary or owner of a savings trust account, including any personally identifiable information about an owner or beneficiary, is confidential except that the board may disclose that information to an account owner regarding the owner's account.

Sec. 54.715. TERMINATION OR MODIFICATION OF PLAN. If the comptroller determines that the plan is not financially feasible, the comptroller shall notify the governor and the legislature and recommend that the board not administer a higher education savings plan or that the plan be modified or terminated.

Sec. 54.716. EFFECT OF TERMINATION OF PLAN ON SAVINGS TRUST AGREEMENT. If the plan is terminated, the balance of each savings trust account shall be paid to the account owner, to the extent possible, and any unclaimed assets shall escheat to the state in accordance with general law regarding unclaimed property.

SECTION 2. Section 54.601, Education Code, is amended by amending Subdivision (4) and adding Subdivision (13) to read as follows:

(4) "Fund" means the Texas tomorrow constitutional trust fund.

(13) "Account" means the Texas college savings plan account.

SECTION 3. Section 54.602(b), Education Code, is amended to read as follows:

(b) The board shall administer the prepaid higher education tuition program established under this subchapter and the higher education savings plan established under Subchapter G.

SECTION 4. Sections 54.603 and 54.634, Education Code, are amended to read as follows:

Sec. 54.603. SUNSET PROVISION. The Prepaid Higher Education Tuition Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and the programs established under this subchapter and under Subchapter G terminate [~~program terminates~~] September 1, 2007.

Sec. 54.634. ESTABLISHMENT OF TRUST FUND; COLLEGE SAVINGS PLAN ACCOUNT. (a) The Texas tomorrow constitutional trust fund is created as a trust fund to be held with the comptroller [~~outside the state treasury~~]. The fund consists of:

- (1) state appropriations for purposes of the fund;
- (2) money acquired from other governmental or private sources;
- (3) money paid under prepaid tuition contracts; and
- (4) the income from money deposited in the fund.

(b) The board shall administer the assets of the fund. The board is the trustee of the fund's assets.

(c) The board may:

- (1) segregate contributions and payments to the fund into various accounts; and
- (2) acquire, hold, manage, purchase, sell, assign, trade, transfer, and dispose of any security, evidence of indebtedness, or other investment in which the fund's assets may be invested.

(d) The Texas college savings plan account is created within the Texas tomorrow constitutional trust fund and is financed through administrative fees and service charges as authorized by Section 54.702(c).

SECTION 5. Subchapter F, Chapter 54, Education Code, is amended by adding Section 54.6401 to read as follows:

Sec. 54.6401. COMPLIANCE WITH LIMITS ON CONTRIBUTIONS AND WITHDRAWALS. The board shall monitor contributions to and withdrawals from the fund and any account within the fund to ensure that any applicable limits on contributions or withdrawals are not exceeded.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 846**

Senator Cain submitted the following Conference Committee Report:

Austin, Texas
May 18, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 846** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

CAIN
SIBLEY
SHAPIRO
WHITMIRE
CARONA

NAISHTAT
J. JONES
NAJERA

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to municipal payroll deductions.

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

SECTION 1. Section 141.008, Local Government Code, is amended to read as follows:

Sec. 141.008. PAYROLL DEDUCTIONS IN CERTAIN MUNICIPALITIES.

(a) Except as provided by Subsection (b), the ~~[The]~~ governing body of a municipality with a population of more than 10,000 may deduct from a municipal employee's monthly salary or wages an amount requested in writing by the employee in payment of membership dues to a bona fide employees' association that is named by the employee and that does not claim the right to strike.

(b) The governing body of a municipality with a population of more than 50,000 shall make the payroll deduction described by Subsection (a) if requested in writing by

the employee and if the municipality permits deductions for purposes other than deductions for charity, health insurance, taxes, or other deductions required by law.

(c) Participation in the payroll deduction program by a municipal employee who is on active full-time duty is voluntary.

(d) ~~(e)~~ An employee's written request must:

(1) be set out in a form prescribed and provided by the municipal treasurer or comptroller;

(2) state the amount to be deducted each month; and

(3) direct the municipal treasurer or comptroller to transfer the deducted funds to the designated employees' association.

(e) ~~(d)~~ The amount deducted each month may not exceed the amount stated in the written request. However, the governing body of a municipality having a program under this section may impose and collect an administrative fee from each participating employee in addition to the membership dues that are withheld. The fee must be a reasonable amount to reimburse the municipality for the administrative costs of collecting, accounting for, and disbursing the membership dues.

(f) ~~(e)~~ A request under this section remains in effect until the municipal treasurer or comptroller receives a written notice of revocation in a form prescribed and provided by the treasurer or comptroller and filed by the employee.

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

The Conference Committee Report was filed with the Secretary of the Senate.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Congratulatory Resolutions

SCR 66 by Staples, Honoring the lives of the fallen peace officers of Nacogdoches County and recognizing the Nacogdoches County Law Enforcement Memorial.

SR 1093 by Barrientos, Congratulating Ruth Burrell.

SR 1094 by Barrientos, Congratulating Coach Jody Conradt of Austin.

SR 1098 by Ellis, Congratulating Weldon H. Latham and his Corporate Diversity Counseling Group.

SR 1099 by Ellis, Congratulating Amal Hassan and Ikram Askari.

SR 1101 by Shapleigh, Congratulating Pedro Antonio Ocegueda of El Paso.

SR 1102 by Shapleigh, Congratulating Don Melendez of El Paso.

SR 1104 by Cain, Congratulating James Larry Tucker of Leonard.

SR 1105 by Cain, Congratulating Loretta H. Kibler of Commerce.

HCR 285 (Carona), Honoring Robert S. "Bob" Driegert for his impressive record of service as chairman of the Dallas County Republican Party.

ADJOURNMENT

On motion of Senator Truan, the Senate at 5:45 p.m. adjourned, in memory of Martin Dies, Jr., of Beaumont and Curtis Dale Tunnell of Austin, until 9:00 a.m. Monday, May 21, 2001.

APPENDIX

SENT TO GOVERNORMay 18, 2001

SB 12, SB 140, SB 148, SB 170, SB 236, SB 274, SB 275, SB 285, SB 368, SB 429, SB 433, SB 453, SB 477, SB 535, SB 542, SB 572, SB 584, SB 587, SB 591, SB 596, SB 647, SB 649, SB 651, SB 673, SB 702, SB 707, SB 714, SB 757, SB 772, SB 790, SB 850, SB 873, SB 877, SB 904, SB 940, SB 962, SB 990, SB 1002, SB 1015, SB 1043, SB 1057, SB 1061, SB 1146, SB 1207, SB 1213, SB 1262, SB 1300, SB 1304, SB 1376, SB 1394, SB 1491, SB 1539, SB 1561, SB 1563, SB 1588, SB 1667, SB 1671, SB 1707, SB 1710, SB 1735, SB 1772, SB 1799, SB 1806, SB 1810, SB 1811, SB 1814, SCR 22, SCR 23, SCR 50, SCR 64

SIGNED BY GOVERNORMay 18, 2001

SB 36, SB 55, SB 72, SB 76, SB 83, SB 116, SB 154, SB 183, SB 634, SB 644, SB 692, SB 708, SB 717, SB 833, SB 908, SB 926, SB 994, SB 1014, SB 1113, SB 1159, SB 1162, SB 1206, SB 1264, SB 1355, SB 1454, SB 1498, SB 1583, SB 1680, SB 1789, SCR 33, SCR 43

In Memory
of
Martin Dies, Jr.

Senator Staples offered the following resolution:

(Senate Resolution 1097)

WHEREAS, The Senate of the State of Texas joins citizens across the state in mourning the loss of the Honorable Martin Dies, Jr., who died Monday, May 14, 2001, at the age of 79; and

WHEREAS, Martin Dies, Jr., was a leading citizen and legendary figure of our state, who as a lawmaker and judge left his mark on the legal community and the citizens of Southeast Texas; he was a resident of Beaumont for 30 years and was a model public servant who was known for his impartiality and professionalism while serving as Chief Justice of the Ninth Court of Appeals; and

WHEREAS, Born December 21, 1921, in Greenville, Hunt County, Texas, Martin Dies was the eldest son of United States Congressman Martin Dies, Sr., and Myrtle McAdams Dies; he attended the University of Virginia and earned a bachelor of science degree from Stephen F. Austin University in 1942; and

WHEREAS, Martin Dies interrupted his college education to volunteer for the United States Navy after our country entered World War II in 1941; he was chosen to attend the Midshipman's Officers Candidate School at Columbia University in New York City, where he earned a Gold Sword upon graduation; he served with distinction as an officer aboard the U.S.S. *Richard W. Seusens* in the Pacific Theater and received numerous medals and citations; following the Battle of Leyte Gulf, he and each of the men on his ship received the Presidential Unit Citation for bravery in action, one of the highest awards the Navy can confer; and

WHEREAS, In 1946, Martin Dies married Ruth Marie White, and in 1947, he graduated from Southern Methodist University Law School; he then practiced law in Lufkin with the firm of Dies, Anderson and Dies; from 1959 to 1967, Martin Dies served as a state senator and became widely known for his outstanding work on behalf of the disabled; he was the author of Senate Bill 403, which created the Lufkin School for Mentally Retarded Children; he also authored the PKU Test Bill with the goal of preventing mental retardation; and

WHEREAS, As a member of the Senate, Martin Dies was known for his dedication to his work on behalf of our state's park system; he was a co-sponsor of the bill that created the Toledo Bend Reservoir, which was praised nationally for its construction without the use of tax money; he was honored by his colleagues in the Senate and by the Texas Parks and Wildlife

Commission when a resolution was passed in 1965 naming the 748-acre park at Dam B Reservoir "The Martin Dies Jr. State Park"; and

WHEREAS, In 1969, Martin Dies was named Secretary of State under Governor Preston Smith; during his tenure, he was a moving force in the enactment of the Technical Vocational Act of 1969 and served as chairman of the first Texas Governor's Committee on Human Relations and the Texas Lunar Landing Commission; and

WHEREAS, Martin Dies became Chief Justice of the Ninth Court of Appeals in Beaumont in September of 1971 and served with distinction until his retirement on August 31, 1989; from 1973 through 1980, Judge Dies served on the Texas Judicial Council, which advises the Legislature and Governor, and he was a member of the Judicial Manpower Commission; in 1980, he was the recipient of the Texas Handicapped Person of the Year Award; and

WHEREAS, An exemplary and distinguished gentleman, Judge Dies was beloved and respected for his many accomplishments and his exceptional leadership as a politician, statesman, and judge; a role model for citizens across our state, he will be remembered as a man of great courage and of the highest moral and ethical standards; and

WHEREAS, Noted for his exceptional integrity, strength, compassion, and generosity, Judge Dies gave unselfishly of his time to his fellowman and his state, and his wisdom, warmth, and valued counsel will not be forgotten by those who knew him; and

WHEREAS, Judge Dies lived his life to the fullest and was a devoted husband, father, and grandfather, and he leaves behind memories that will be treasured forever by his family and many friends; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby extend sincere condolences to the bereaved family of Martin Dies, Jr.: his wife, Ruth Dies; his daughter and son-in-law, Dianne Dies Schoch and Dr. Eugene P. Schoch III; his sons and daughters-in-law, Martin W. Dies and David Dies and Sharon Dies and Shelby Dies; his brother, Jack Dies; and his seven grandchildren; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the members of his family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of Martin Dies, Jr.

STAPLES
BERNSEN
TRUAN

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

On motion of Senator Truan and by unanimous consent, the following remarks regarding **SR 1097** were ordered reduced to writing and printed in the *Senate Journal*:

Senator Staples: Thank you Mr. President. Members, there was a great loss to the State of Texas today with the passing of a former Member of this body, Martin Dies, Jr. He was the eldest son of Martin Dies, Sr., a United States Congressman. He had a Bachelor's of Science from Stephen F. Austin State University. He was a veteran; he served in the Navy during World War II in the Pacific Theater earning numerous medals and citations, and was really an icon of what it meant to serve our country. He was elected to the Texas Senate in 1959, representing Senate District 3, and is remembered fondly by the citizens of our part of Texas. In 1963 he served as President Pro Tempore for the regular session. He had a distinguished career in state government and in 1969 he was sworn in as Secretary of State. Later on he became the Chief Justice of the Ninth Court of Appeals in Beaumont in 1971, where he served with distinction until he retired in 1989. Following a brief illness, Judge Dies passed away on May 14th at the age of 79. He is survived by devoted wife, Ruth; daughter, Dianne Dies Schoch; sons, Martin W. and David Dies; and brother, Jack Dies; and his grandchildren.

Senator Bernsen: I want to join with Senator Staples and the Dean to mourn the passing of a true Texas statesman, former state Senator Martin Dies, Jr., who died this week. He served with great dignity and distinction, both his country and the United States Navy, and his home state of Texas. During his esteemed service in this body his compassion for the disabled and mentally retarded in our state received local, state, and national acclaim. Judge Dies, as I knew him in Beaumont, delivered faithfully on his personal commitment to enhance public awareness of the plight of the disabled and he is credited with the establishment of the Lufkin School for Mentally Retarded Children. He raised the government recognition of the needs of the disabled and the mentally retarded, and those of the disadvantaged, the aged, and the blind. Judge Dies is also widely credited with making much-needed improvements to our state park system, and in his honor, the state Senate called upon the Texas Parks and Wildlife Commission to name a 748-acre park at Dam B Reservoir in Jasper and Tyler counties as The Martin Dies Jr. State Park. In every endeavor, Mr. President and Members, Judge Dies epitomized moral and ethical integrity. He was a gentleman in every way, kind-hearted, gracious, caring, and compassionate. Judge Dies was the kind of Texas lawmaker, judicial scholar, husband, father, grandfather, and friend that we all strive to become. I am deeply saddened by the death of Judge Dies and the tremendous void that he leaves in Southeast Texas and I am honored to stand on the floor with Senator Staples and Dean Truan in recognition and memory of this great Texan. Thank you.

Senator Truan: Thank you Mr. President. I want to join Senators Staples and Bernsen, as well, in making certain that our state understands that we have lost a giant, a truly dedicated public servant, one who had assumed the position of Secretary of State under former Governor Preston Smith when I first came to the legislature. By that time, his reputation was legendary, and I was very pleased that I had an opportunity to have known him and to have worked with him, and I join in this resolution, Members.

In Memory
of
Curtis Dale Tunnell

Senator Barrientos offered the following resolution:

(Senate Resolution 1055)

WHEREAS, The Senate of the State of Texas joins the citizens of Austin and the entire State of Texas in mourning the loss of noted archeologist and historian Curtis Dale Tunnell, who died on April 13, 2001, at the age of 67; and

WHEREAS, A native Texan, Curtis Tunnell was born in Turkey, in Hall County; he grew to adulthood in the Panhandle and left home to attend West Texas State College in Canyon to study geology, paleontology, and anthropology; and

WHEREAS, At West Texas, Curtis worked in the Panhandle-Plains Historical Museum, one of the foremost archeological research centers in the state; during that time, he surveyed large areas of the Panhandle; and

WHEREAS, Joining the United States Navy after college, Curtis saw service in the Pacific, and after his tour of duty he returned to Texas and worked on the Texas Rivers Basin Survey project; he worked in the Lake Amistad area along the Rio Grande; and

WHEREAS, He attended The University of Texas at Austin, where he received a master's degree in anthropology; he became a field researcher for the University of Illinois and worked on several sites including the famous Cahokia Mounds; and

WHEREAS, Curtis returned to Austin as Curator of Anthropology for the Texas Memorial Museum; the Texas Legislature created the position of State Anthropologist in 1965, and the man selected for the new position was Curtis Tunnell; and

WHEREAS, The State Archeologist was assigned to the Texas State Historical Commission; as the official archeologist, he took part in scientific investigations at the Alamo and other Spanish Colonial sites in Texas, directed archeological digs throughout the state, and traveled the Rio Grande to record the archeological resources present in the canyons of Big Bend; and

WHEREAS, Instrumental in the development of the Antiquities Code of Texas, Curtis Tunnell opposed commercial salvagers to save the 1554 Spanish shipwreck artifacts for the State of Texas; he documented the work of many folk artisans and craftsmen of the Texas-Mexico border region; and

WHEREAS, Becoming the executive director of the Texas Historical Commission in 1981, Mr. Tunnell served in that position until his retirement in 1999; and

WHEREAS, Beloved by many people, Mr. Tunnell is especially remembered as a respected scientist, an outstanding archeologist, a tireless worker for "the people's history," and a great friend to preservationists; and

WHEREAS, Curtis Tunnell was a man of determination, strength, and integrity whose concern for his fellow citizens was inspirational; although his guidance will be missed, his spirit continues to live in the hearts of those whose lives he touched; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby extend sincere condolences to his family: his wife, Nancy; and his brother, Gary Tunnell; and, be it further

RESOLVED, That a copy of this Resolution be prepared for his family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of Curtis Dale Tunnell.

The resolution was again read.

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

The resolution was previously adopted on Tuesday, May 15, 2001.

Senator Barrientos was recognized and introduced to the Senate the wife of Curtis Tunnell, Nancy Tunnell, accompanied by Pat Mercado Ellinger, Jim Bruseth, and Dan Utley.

The Senate welcomed its guests and extended its sympathy.