

# SEVENTY-NINTH DAY

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WEDNESDAY, MAY 23, 2001

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## PROCEEDINGS

The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by the President.

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

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

The Reverend John Dillard, First United Methodist Church, Wichita Falls, offered the invocation as follows:

Dear God, we thank You for each and every person here today. We thank You for each and every one that is represented by these here today. It is both a privilege and awesome responsibility to be a free people. We need more help than we are at times. May Your inspiring guidance be present in both the work of the specific words and letters used to create the laws we live by, and may we never lose sight of the spirit or the purpose of the laws in the first place.

May we work to make this state a better place in which to live for all who dwell here or are passing through. May we acknowledge a power greater than ourselves in life, by whatever name we choose to call You.

Thank You for the gift of life we have. Thank You for all that You have done, are doing, and will do this day. In the name of all that is holy and sacred. 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.

## **SENATE BILL 1156 WITH HOUSE AMENDMENTS**

Senator Zaffirini called **SB 1156** 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 1156** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the state Medicaid program.

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

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

(x) In its rules and standards governing the vendor drug program, the department may not limit benefits for the number of medications prescribed to a recipient of prescription drug benefits under the medical assistance program. In accordance with Section 531.02106, Government Code, the department also shall provide for cost-sharing by recipients of prescription drug benefits under the medical assistance program in a manner that ensures that recipients with higher levels of income are required to pay progressively higher percentages of the costs of prescription drugs. In implementing cost-sharing provisions required by this subsection, the department may not require a pharmacy participating in the vendor drug program to collect copayments or other cost-sharing payments from recipients for remittance to the department, but shall allow the pharmacy to retain the payments as a component of the reimbursement provided to the pharmacy under the program.

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

SECTION 2. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Sections 32.0247 and 32.0248 to read as follows:

Sec. 32.0247. ELIGIBILITY OF CERTAIN ALIENS. (a) The department shall provide medical assistance in accordance with 8 U.S.C. Section 1612(b), as amended, to a person who:

(1) is a qualified alien, as defined by 8 U.S.C. Sections 1641(b) and (c), as amended;

(2) meets the eligibility requirements of the medical assistance program;

(3) entered the United States on or after August 22, 1996; and

(4) has resided in the United States for a period of five years after the date the person entered as a qualified alien.

(b) If authorized by federal law, the department shall provide pregnancy-related medical assistance to the maximum extent permitted by the federal law to a person who is pregnant and is a lawfully present alien as defined by 8 C.F.R. Section 103.12, as amended, including a battered alien under 8 U.S.C. Section 1641(c), as amended, regardless of the date on which the person entered the United States. The department shall comply with any prerequisite imposed under the federal law for providing medical assistance under this subsection.

Sec. 32.0248. MEDICAL ASSISTANCE FOR CERTAIN PERSONS MAKING TRANSITION FROM FOSTER CARE TO INDEPENDENT LIVING. (a) In this section, "independent foster care adolescent" has the meaning assigned by 42 U.S.C. Section 1396d(w)(1).

(b) The department shall provide medical assistance, in accordance with department rules, to an independent foster care adolescent who:

(1) is not otherwise eligible for medical assistance; and

(2) is not covered by a health benefits plan offering adequate benefits, as determined by the Health and Human Services Commission.

(c) The department may not consider a person's income, assets, or resources in determining whether the person is eligible for medical assistance under this section.

(b) As soon as possible after the effective date of this Act, the Health and Human Services Commission shall submit an amendment to the state's Medicaid plan to include the provision of medical assistance to independent foster care adolescents as required by Section 32.0248, Human Resources Code, as added by this Act.

SECTION 3. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0252 to read as follows:

Sec. 32.0252. CONTRACT TO PROVIDE ELIGIBILITY DETERMINATION SERVICES. (a) To the extent allowed by federal law, and except as otherwise provided by this section, the department may contract for the provision of medical assistance eligibility services with:

(1) a hospital district created under the authority of Sections 4-11, Article IX, Texas Constitution;

(2) a hospital authority created under the authority of Chapter 262 or 264, Health and Safety Code, that uses resources to provide health care services to indigent persons to some extent;

(3) a hospital owned and operated by a municipality or county or by a hospital authority created under Chapter 262 or 264, Health and Safety Code;

(4) a medical school operated by this state;

(5) a medical school that receives state money under Section 61.093, Education Code, or a chiropractic school that receives state money under the General Appropriations Act;

(6) a teaching hospital operated by The University of Texas System;

(7) a county that is required to provide health care assistance to eligible county residents under Subchapter B, Chapter 61, Health and Safety Code;

(8) a governmental entity that is required to provide money to a public hospital under Section 61.062, Health and Safety Code;

(9) a county with a population of more than 400,000 that provides money to a public hospital and that is not included in the boundaries of a hospital district;

(10) a hospital owned by a municipality and leased to and operated by a nonprofit hospital for a public purpose;

(11) a hospital that receives Medicaid disproportionate share payments;

(12) a community mental health and mental retardation center;

(13) a local mental health or mental retardation authority;

(14) a local health department or public health district;

(15) a school-based health center;

(16) a community health center; and

(17) a federally qualified health center.

(b) The department may contract with an entity described by Subsection (a) for the entity to designate one or more employees of the entity to process medical assistance application forms and conduct client interviews for eligibility determinations.

(c) The contract must require each designated employee to submit completed application forms to the appropriate agency as determined by the department to finally determine eligibility and to enroll eligible persons in the program. A designated employee may not make a final determination of eligibility or enroll an eligible person in the program.

(d) The department may:

(1) monitor the eligibility and application processing program used by an entity with which the department contracts; and

(2) provide on-site supervision of the program for quality control.

(e) The Health and Human Services Commission shall ensure that there are adequate protections to avoid a conflict of interest with an entity described by Subsection (a) that has a contract for eligibility services and also has a contract, either directly or through an affiliated entity, as a managed care organization for the Medicaid program or for the child health plan program under Chapter 62, Health and Safety Code. The commission shall ensure that there are adequate protections for recipients to freely choose a health plan without being inappropriately induced to join an entity's health plan.

SECTION 4. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0271 to read as follows:

Sec. 32.0271. SELECTION OF NURSE FIRST ASSISTANT. (a) In this section, "nurse first assistant" means a registered nurse who:

(1) is certified in perioperative nursing by an organization recognized by the Board of Nurse Examiners; and

(2) has completed a nurse first assistant educational program approved by an organization recognized by the Board of Nurse Examiners.

(b) The department shall ensure that a recipient of medical assistance may select a nurse first assistant to perform any health care service or procedure covered under the medical assistance program if:

(1) the selected nurse first 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 nurse first assistant.

(c) The Board of Nurse Examiners may adopt rules governing nurse first assistants for purposes of this section.

SECTION 5. Section 32.029, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) The department or its designee may implement demonstration projects designed to reduce medical assistance claims processing costs.

SECTION 6. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0422 to read as follows:

Sec. 32.0422. HEALTH INSURANCE PREMIUM PAYMENT REIMBURSEMENT PROGRAM FOR MEDICAL ASSISTANCE RECIPIENTS. (a) In this section:

(1) "Department" means the Texas Department of Health.

(2) "Group health benefit plan" has the meaning assigned by Article 21.52K, Insurance Code.

(b) The department shall identify individuals, otherwise entitled to medical assistance, who are eligible to enroll in a group health benefit plan. The department must include individuals eligible for or receiving health care services under a Medicaid managed care delivery system.

(c) The department may require an individual requesting medical assistance to provide information as necessary relating to the availability of a group health benefit plan to the individual through an employer of the individual or an employer of the individual's spouse or parent. The department may not leave pending, consider incomplete, or otherwise delay an individual's application for medical assistance or request for recertification as a result of the requirement authorized by this subsection.

(d) For an individual identified under Subsection (b), the department shall determine whether it is cost-effective to enroll the individual in the group health benefit plan under this section.

(e) If the department determines that it is cost-effective to enroll the individual in the group health benefit plan, the department shall:

(1) require the individual to apply to enroll in the group health benefit plan as a condition for eligibility under the medical assistance program; and

(2) provide written notice to the issuer of the group health benefit plan in accordance with Article 21.52K, Insurance Code.

(f) The department shall provide for payment of:

(1) the employee's share of required premiums for coverage of an individual enrolled in the group health benefit plan; and

(2) any deductible, copayment, coinsurance, or other cost-sharing obligation imposed on the enrolled individual for an item or service otherwise covered under the medical assistance program.

(g) A payment made by the department under Subsection (f) is considered to be a payment for medical assistance.

(h) A payment of a premium for an individual who is a member of the family of an individual enrolled in a group health benefit plan under this section and who is not eligible for medical assistance is considered to be a payment for medical assistance for an eligible individual if:

(1) enrollment of the family members who are eligible for medical assistance is not possible under the plan without also enrolling members who are not eligible; and

(2) the department determines it to be cost-effective.

(i) A payment of any deductible, copayment, coinsurance, or other cost-sharing obligation of a family member who is enrolled in a group health benefit plan in accordance with Subsection (h) and who is not eligible for medical assistance:

(1) may not be paid under this chapter; and

(2) is not considered to be a payment for medical assistance for an eligible individual.

(j) The department shall treat coverage under the group health benefit plan as a third party liability to the program. Enrollment of an individual in a group health benefit plan under this section does not affect the individual's eligibility for medical assistance benefits, except that the state is entitled to payment under Sections 32.033 and 32.038.

(k) The department may not require or permit an individual who is enrolled in a group health benefit plan under this section to participate in the Medicaid managed care program under Chapter 533, Government Code, or a Medicaid managed care demonstration project under Section 32.041.

(l) The Texas Department of Human Services shall provide information and otherwise cooperate with the department as necessary to ensure the enrollment of eligible individuals in the group health benefit plan under this section.

(m) The department shall adopt rules as necessary to implement this section. In developing rules and related procedures, the department shall consult with providers and other interested persons to minimize the administrative complexity of the program.

(b) Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.52K to read as follows:

Art. 21.52K. ENROLLMENT OF MEDICAL ASSISTANCE RECIPIENTS

Sec. 1. DEFINITION OF GROUP HEALTH BENEFIT PLAN. (a) In this article, "group health benefit plan" means a plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including a group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or a group evidence of coverage or similar group coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 20 of this code;

(3) a fraternal benefit society operating under Chapter 10 of this code;

(4) a stipulated premium insurance company operating under Chapter 22 of this code;

(5) a reciprocal exchange operating under Chapter 19 of this code;

(6) a health maintenance organization operating under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code);

(7) a multiple employer welfare arrangement that holds a certificate of authority under Article 3.95-2 of this code; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Article 21.52F of this code.

(b) The term "group health benefit plan" includes:

(1) a small employer health benefit plan written under Chapter 26 of this code; and

(2) a plan provided under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), the Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), the Texas Public School Employees Group Insurance Act (Article 3.50-4, Vernon's Texas Insurance Code), or a successor of any of those plans.

Sec. 2. ENROLLMENT REQUIRED. (a) The issuer of a group health benefit plan, on receipt of written notice from the Texas Department of Health or a designee of the Texas Department of Health that states that an individual who is otherwise eligible for enrollment in the plan is a recipient of medical assistance under the state Medicaid program and is a participant in the health insurance premium payment reimbursement program for medical assistance recipients under Section 32.0422, Human Resources Code, shall permit the individual to enroll in the plan without regard to any enrollment period restriction.

(b) If an individual described by Subsection (a) of this section is not eligible to enroll in the plan unless a family member of the individual is also enrolled in the plan, the issuer, on receipt of the written notice under Subsection (a) of this section, shall enroll both the individual and the family member in the plan.

(c) Unless enrollment occurs during an established enrollment period, enrollment under this article takes effect on the first day of the calendar month that begins at least 30 days after the date written notice is received by the issuer under Subsection (a) of this section.

(d) Notwithstanding any other requirement of the group health benefit plan, the issuer of the plan shall permit an individual who is enrolled in a group health benefit plan under Subsection (a) of this section, and any family member of the individual enrolled under Subsection (b) of this section, to terminate enrollment in the plan not later than the 60th day after the date on which the individual provides satisfactory proof to the issuer that the individual is no longer:

(1) a recipient of medical assistance under the state Medicaid program; or  
(2) a participant in the health insurance premium payment reimbursement program for medical assistance recipients under Section 32.0422, Human Resources Code.

(c) The changes in law made by this section take effect August 31, 2001, and apply only to a group health benefit plan that is delivered, issued for delivery, or renewed on or after that date. A group health benefit plan that is delivered, issued for delivery, or renewed before August 31, 2001, is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

SECTION 7. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Sections 32.053-32.056 to read as follows:

Sec. 32.053. DEMONSTRATION PROJECT FOR CERTAIN MEDICATIONS AND RELATED SERVICES. (a) The department shall establish a demonstration project to provide to a person through the medical assistance program psychotropic medications and related laboratory and medical services necessary to conform to a prescribed medical regime for those medications.

(b) A person is eligible to participate in the demonstration project if the person:  
(1) has been diagnosed as having a mental impairment, including schizophrenia or bipolar disorder, that is expected to cause the person to become a disabled individual, as defined by Section 1614(a) of the federal Social Security Act (42 U.S.C. Section 1382c), as amended;

(2) is at least 19 years of age, but not more than 64 years of age;  
(3) has a net family income that is at or below 200 percent of the federal poverty level;

(4) is not covered by a health benefits plan offering adequate coverage, as determined by the department; and

(5) is not otherwise eligible for medical assistance at the time the person's eligibility for participation in the demonstration project is determined.

(c) To the extent allowed by federal law, and except as otherwise provided by this section, the department may contract for the provision of eligibility services for the demonstration project with a local mental health authority.

(d) Notwithstanding any other provision of this section, the department shall provide each participant in the demonstration project with a 12-month period of continuous eligibility for participation in the project.

(e) Participation in the demonstration project does not entitle a participant to other services provided under the medical assistance program.

(f) The department shall establish an appropriate enrollment limit for the demonstration project and may not allow participation in the project to exceed that

limit. Once the limit is reached, the department shall establish a waiting list for enrollment in the demonstration project.

(g) To the extent permitted by federal law, the department may require a participant in the demonstration project to make cost-sharing payments for services provided through the project.

(h) To the maximum extent possible, the department shall use existing resources to fund the demonstration project.

(i) Not later than December 1 of each even-numbered year, the department shall submit a biennial report to the legislature regarding the department's progress in establishing and operating the demonstration project.

(j) Not later than December 1, 2006, the department shall evaluate the cost-effectiveness of the demonstration project, including whether the preventive drug treatments and related services provided under the project offset future long-term care costs for project participants. If the results of the evaluation indicate that the project is cost-effective, the department shall incorporate a request for funding for the continuation of the program in the department's budget request for the next state fiscal biennium.

(k) This section expires September 1, 2012.

Sec. 32.054. DEMONSTRATION PROJECT FOR PERSONS WITH HIV INFECTION OR AIDS. (a) In this section, "AIDS" and "HIV" have the meanings assigned by Section 81.101, Health and Safety Code.

(b) The department shall establish a demonstration project to provide a person with HIV infection or AIDS with the following services and medications through the medical assistance program:

(1) services provided by a physician, physician assistant, advanced practice nurse, or other health care provider specified by the department;

(2) medications not included in the formulary for the HIV medication program operated by the department, but determined to be necessary for treatment of a condition related to HIV infection or AIDS;

(3) vaccinations for hepatitis B and pneumonia;

(4) pap smears, colposcopy, and other diagnostic procedures necessary to monitor gynecologic complications resulting from HIV infection or AIDS in women;

(5) hospitalization;

(6) laboratory and other diagnostic services, including periodic testing for CD4+ T-cell counts, viral load determination, and phenotype or genotype testing if clinically indicated; and

(7) other laboratory and radiological testing necessary to monitor potential toxicity of therapy.

(c) The department shall establish the demonstration project in at least two counties with a high prevalence of HIV infection and AIDS. The department shall ensure that the demonstration project is financed using funds made available by the counties in which the department establishes the demonstration project. The manner in which a county makes funds available may include an option for the county to be able to certify the amount of funds considered available instead of sending the funds to the state.

(d) A person is eligible to participate in the demonstration project if the person:

(1) has been diagnosed with HIV infection or AIDS by a physician;

(2) is under 65 years of age;

(3) has a net family income that is at or below 200 percent of the federal poverty level;

(4) is a resident of a county included in the project or, subject to guidelines established by the department, is receiving medical care for HIV infection or AIDS through a facility located in a county included in the project;

(5) is not covered by a health benefits plan offering adequate coverage, as determined by the department; and

(6) is not otherwise eligible for medical assistance at the time the person's eligibility for participation in the demonstration project is determined.

(e) Participation in the demonstration project does not entitle a participant to other services provided under the medical assistance program.

(f) The department shall establish an appropriate enrollment limit for the demonstration project and may not allow participation in the project to exceed that limit. Once the limit is reached, the department:

(1) shall establish a waiting list for enrollment in the demonstration project; and

(2) may allow eligible persons on the waiting list to enroll solely in the HIV medication program operated by the department.

(g) The department shall ensure that a participant in the demonstration project is also enrolled in the HIV medication program operated by the department.

(h) Notwithstanding any other provision of this section, the department shall provide each participant in the project with a six-month period of continuous eligibility for participation in the project.

(i) Not later than December 1 of each even-numbered year, the department shall submit a biennial report to the legislature regarding the department's progress in establishing and operating the demonstration project.

(j) Not later than December 1, 2006, the department shall evaluate the cost-effectiveness of the demonstration project, including whether the services and medications provided offset future higher costs for project participants. If the results of the evaluation indicate that the project is cost-effective, the department shall incorporate a request for funding for the expansion of the project into additional counties or throughout the state, as appropriate, in the department's budget request for the next state fiscal biennium.

(k) This section expires September 1, 2012.

Sec. 32.055. DEMONSTRATION PROJECTS FOR PROVISION OF MEDICAL ASSISTANCE TO CERTAIN LOW-INCOME INDIVIDUALS. (a) The Health and Human Services Commission shall establish demonstration projects to provide medical assistance under this chapter to adult individuals who are not otherwise eligible for medical assistance and whose incomes are at or below 200 percent of the federal poverty level.

(b) The Health and Human Services Commission shall select one or more municipalities or counties in which to implement the demonstration projects.

(c) The Health and Human Services Commission, in conjunction with local governmental entities that make funds available to the commission in accordance with this section, shall design the components of the demonstration project and shall ensure that:

(1) each demonstration project is financed using funds made available by certain local governmental entities, through a certification process, to the commission for matching purposes to maximize federal funds for the medical assistance program; and

(2) a participant in a demonstration project is not subject to a limitation imposed on prescription drug benefits under the medical assistance program.

(d) The Health and Human Services Commission shall appoint regional advisory committees to assist the commission in establishing and implementing demonstration projects under this section. An advisory committee must include health care providers, employers, and local government officials.

Sec. 32.056. DEMONSTRATION PROJECT FOR WOMEN'S HEALTH CARE SERVICES. (a) The department shall establish a five-year demonstration project through the medical assistance program to expand access to preventive health and family planning services for women. A woman eligible under Subsection (b) to participate in the demonstration project may receive preventive health and family planning services, including:

(1) medical history;

(2) physical examinations;

(3) counseling and education on contraceptive methods;

(4) provision of contraceptives;

(5) health screenings, including screening for:

(A) diabetes;

(B) cervical cancer;

(C) breast cancer;

(D) sexually transmitted diseases;

(E) hypertension;

(F) cholesterol; and

(G) tuberculosis;

(6) risk assessment; and

(7) referral of medical problems to appropriate providers.

(b) A woman is eligible to participate in the demonstration project if the woman:

(1) is of childbearing age, as determined by the department;

(2) has a net family income that is at or below 185 percent of the federal poverty level; and

(3) is not otherwise eligible for the medical assistance program.

(c) The department shall develop procedures for determining and certifying presumptive eligibility for a woman eligible under Subsection (b). The department shall integrate these procedures with current procedures to minimize duplication of effort by providers, the department, and other state agencies.

(d) The department shall provide for 12 months of continuous eligibility for a woman eligible under Subsection (b).

(e) The department shall compile a list of potential funding sources a client can use to help pay for treatment for health problems:

(1) identified using services provided to the client under the demonstration project; and

(2) for which the client is not eligible to receive treatment under the medical assistance program.

(f) Not later than December 1 of each even-numbered year, the department shall submit a report to the legislature that includes a statement of the department's progress in establishing and operating the demonstration project.

(g) The department shall ensure that money under the demonstration project established by this section may not be used for an abortion, as that term is defined by Section 245.002, Health and Safety Code.

(h) To the extent required by federal budget neutrality requirements, the department may establish an appropriate enrollment limit for the demonstration project.

(i) This section expires September 1, 2007.

(b) The state agency responsible for implementing the demonstration projects required by Sections 32.053-32.056, Human Resources Code, as added by this Act, shall request and actively pursue any necessary waivers or authorizations from the Health Care Financing Administration or other appropriate entities to enable the agency to implement the demonstration project not later than September 1, 2002. The agency may delay implementing the demonstration project until the necessary waivers or authorizations are granted.

SECTION 8. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.057 to read as follows:

Sec. 32.057. PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE). (a) The department, as a part of the medical assistance program, shall develop and implement a program of all-inclusive care for the elderly (PACE) in accordance with Section 4802 of the Balanced Budget Act of 1997 (Pub. L. No. 105-33), as amended. The department shall provide medical assistance to a participant in the PACE program in the manner and to the extent authorized by federal law.

(b) The department shall adopt rules as necessary to implement this section. In adopting rules, the department shall:

(1) use the Bienvivir Senior Health Services of El Paso initiative as a model for the program; and

(2) ensure that a person is not required to hold a certificate of authority as a health maintenance organization under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) to provide services under the PACE program.

(c) The department may not contract with a person to provide services under the PACE program unless the person:

(1) purchases reinsurance in an amount determined by the department that is sufficient to ensure the person's continued solvency; or

(2) has the financial resources sufficient to cover expenses in the event of the person's insolvency.

(d) To demonstrate sufficiency of financial resources for purposes of Subsection (c)(2), a person may use cash reserves, a letter of credit, a guarantee of a company affiliated with the person, or a combination of those arrangements. The amount of a person's financial arrangement must be at least equal to the sum of:

(1) the total capitation revenue for one month; and

(2) the average monthly payment of operating expenses.

(e) The department shall consult with the Texas Department of Insurance in determining a person's sufficiency of financial resources for continued solvency or to cover expenses in the event of the person's insolvency as required by Subsection (c).

(f) The department, with direction from the Health and Human Services Commission, shall develop and implement a coordinated plan to promote PACE program sites operating under this section. The department shall adopt policies and procedures to ensure that caseworkers and any other appropriate state agency staff discuss the benefits of participating in the PACE program with long-term care clients.

(b) The state agency administering the program of all-inclusive care for the elderly (PACE) implemented under Section 32.057, Human Resources Code, as added by this Act, shall use its best efforts to develop and support multiple PACE program sites.

(c) If before June 1, 2004, the state does not receive federal approval for the operation of all PACE program sites for which the state has applied solely because the federal limit on the number of new PACE program sites allowed nationwide per year has been attained, the Health and Human Services Commission and Texas Department of Human Services, not later than September 1, 2004, shall examine federal laws and regulations regarding PACE programs and identify changes to law that would result in an increased number of PACE programs in this state.

(d) Not later than December 1, 2004, the commissioner of health and human services shall submit to the legislature a written report concerning the results of the examination conducted under Subsection (c) of this section. The report must include any recommendations for memorializing the Congress of the United States to request changes to federal laws or regulations.

(e) As soon as practicable after the effective date of this Act, the Health and Human Services Commission shall submit an amendment to the state's Medicaid plan authorizing the state to implement the program of all-inclusive care for the elderly (PACE) established under Section 32.057, Human Resources Code, as added by this Act. The commission is not required to submit an additional amendment to the state's Medicaid plan each time the state agency administering the PACE program selects and enters into a proposed agreement with a provider to deliver services under the program.

SECTION 9. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.02101-531.02106 to read as follows:

Sec. 531.02101. TRANSFER AUTHORITY RELATING TO ADMINISTRATION OF MEDICAID PROGRAM. (a) To the extent that reorganization is necessary to achieve the goals of increased administrative efficiency, increased accountability, or cost savings in the Medicaid program or to otherwise improve the health of residents of this state, the commission, subject to Subsection (b), may transfer any power, duty, function, program, activity, obligation, right, contract, record, employee, property, or appropriation or other money relating to administration of the Medicaid program from a health and human services agency to the commission.

(b) A transfer authorized by Subsection (a) may not take effect unless approved by the Medicaid legislative oversight committee created under Section 531.02102.

(c) The commission must notify the Legislative Budget Board and the governor's office of budget and planning not later than the 30th day before the effective date of a transfer authorized by Subsection (a).

Sec. 531.02102. MEDICAID LEGISLATIVE OVERSIGHT COMMITTEE.

(a) The Medicaid legislative oversight committee is composed of:

(1) three members of the senate appointed by the lieutenant governor; and

(2) three members of the house of representatives appointed by the speaker of the house of representatives.

(b) A member of the Medicaid legislative oversight committee serves at the pleasure of the appointing official.

(c) The lieutenant governor and speaker of the house of representatives shall appoint the presiding officer of the Medicaid legislative oversight committee on an alternating basis. The presiding officer shall serve a two-year term expiring February 1 of each odd-numbered year.

(d) The Medicaid legislative oversight committee shall:

(1) meet not more than quarterly at the call of the presiding officer; and

(2) review and approve or reject any transfer proposed by the commission of a power, duty, function, program, activity, obligation, right, contract, record, employee, property, or appropriation or other money relating to administration of the Medicaid program from a health and human services agency to the commission.

(e) The Medicaid legislative oversight committee may use staff of standing committees in the senate and house of representatives with appropriate jurisdiction, the Department of Information Resources, the state auditor, the Texas Legislative Council, and the Legislative Budget Board in carrying out its responsibilities.

Sec. 531.02103. MEDICAID PROGRAM: STRATEGIES FOR IMPROVING BUDGET CERTAINTY AND COST SAVINGS. (a) To achieve administrative efficiency and cost savings in the Medicaid program, the commission shall develop and implement strategies to improve management of the cost, quality, and use of services provided under the program. The strategies developed and implemented under this section may include:

(1) expansion of an enhanced primary care case management model in areas of the state currently subject to fee-for-service arrangements;

(2) use of medical case management for complex medical cases;

(3) mandatory enrollment of some or all Medicaid recipients who receive Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.) into a STAR + Plus pilot program in an area of the state served by a STAR + Plus pilot program as of January 1, 2001, or into an alternate managed care model developed by the commission;

(4) use of telemedicine for children and other persons with special health care needs;

(5) use of copayments and other mechanisms to encourage responsible use of health care services under the program, provided that implementation occurs in accordance with Section 531.02106;

(6) use of procurement initiatives such as selective contracting as a mechanism for obtaining provider services under the program, provided that the initiatives may not apply to pharmacies participating in the vendor drug program;

(7) expansion of the program of all-inclusive care for the elderly (PACE), as authorized by Section 4802 of the Balanced Budget Act of 1997 (Pub. L. No. 105-33), as amended, to additional sites;

(8) use of disease management and drug therapy management for Medicaid recipients with chronic diseases, including congestive heart failure, chronic obstructive pulmonary disease, asthma, and diabetes;

(9) use of cost controls in the provision of pharmaceutical services as necessary to ensure appropriate pricing, cost-effective use of pharmaceutical products, and the state's greatest entitlement to rebates from pharmaceutical manufacturers;

(10) use of competitive pricing for medical equipment and supplies, including vision care equipment and supplies;

(11) expansion of the health insurance premium payment reimbursement system (HIPPS); and

(12) reduction of hospital outlier payments by not more than five percent for cases that exceed the established rate of reimbursement.

(b) The commission shall consult with local communities, providers, consumers, and other affected parties in the development and implementation of strategies under Subsection (a) and shall solicit input on the need for and effect of those strategies. The commission may use existing state or local advisory committees for this purpose or may hold public hearings in the development of agency rules and procedures and necessary state plan amendments or waivers.

Sec. 531.02104. MEDICAID ELIGIBILITY AND ENROLLMENT. The commission shall ensure that:

(1) the Medicaid eligibility policies, processes, and time frames of the Texas Department of Human Services, including policies, processes, and time frames relating to an applicant or recipient whose eligibility status is on hold, are designed to minimize the time that an applicant or recipient is required to wait before the applicant or recipient begins receiving services or is recertified;

(2) each state agency operating a part of the Medicaid program conforms the Medicaid eligibility policies and related processes and time frames, including any cutoff dates, of the agency and any agency contractor to the Medicaid eligibility policies, processes, and time frames of the Texas Department of Human Services; and

(3) the Medicaid eligibility policies, processes, and time frames of each agency operating a part of the Medicaid program and any agency contractor are designed to minimize the time that an applicant or recipient is required to wait before receiving services.

Sec. 531.02105. TEXAS HEALTH STEPS PROGRAM. The commission shall:

(1) take all actions necessary to simplify:

(A) provider enrollment in the Texas Health Steps program;

(B) reporting requirements relating to the Texas Health Steps program; and

(C) billing and coding procedures so that Texas Health Steps program processes are more consistent with commercial standards;

(2) in consultation with providers of Texas Health Steps program services, develop mechanisms to promote accurate, reliable, and timely reporting of examinations of children conducted under the program to managed care organizations and other appropriate entities;

(3) in consultation with providers of Texas Health Steps program services, develop a mechanism to promote incorporation of Texas Health Steps program services into a child's medical home; and

(4) require the external quality monitoring organization to evaluate the Texas Health Steps program using information available from all relevant sources and prepare periodic reports regarding the program for submission by the commission to the legislature.

Sec. 531.02106. GUIDELINES FOR MEDICAID COST-SHARING. Before requiring Medicaid recipients to make copayments or comply with other cost-sharing requirements, the commission by rule shall:

(1) establish monthly limits on total copayments and other cost-sharing requirements so that:

(A) a recipient with an income at or below the federal poverty level is not required to pay more than the lesser of \$10 or five percent of the recipient's monthly household gross income, and the total amount required to be paid by all members of a household consisting only of recipients with incomes at or below the federal poverty level does not exceed five percent of the recipients' monthly household gross income; and

(B) a recipient with an income above the federal poverty level is not required to pay more than five percent of the recipient's monthly household gross income, and the total amount required to be paid by all members of a household that includes a recipient with an income above the federal poverty level does not exceed five percent of the members' monthly household gross income; and

(2) exempt preventive care services from any copayment or other cost-sharing requirements.

(b) As soon as possible after the effective date of this Act, the lieutenant governor and the speaker of the house of representatives shall appoint the members of the Medicaid legislative oversight committee created by Section 531.02102, Government Code, as added by this Act. The speaker of the house of representatives shall appoint the initial presiding officer of the committee.

SECTION 10. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02131 to read as follows:

Sec. 531.02131. COMMUNITY OUTREACH CAMPAIGN. (a) The commission shall conduct a community outreach campaign to provide information relating to the availability of Medicaid coverage for children and adults and to promote enrollment of eligible children and adults in Medicaid.

(b) As a part of the community outreach campaign, the commission shall inform potential Medicaid recipients of the toll-free telephone assistance number required by Section 531.0213.

(c) The commission shall contract with community-based organizations and other organizations, as appropriate, for assistance in implementing the community outreach campaign.

(d) In designing the community outreach campaign, the commission shall include components similar to components of the community outreach campaign required under Section 62.056, Health and Safety Code.

(e) To the extent feasible and appropriate, the commission may combine the community outreach campaign required by this section with any other state outreach campaign or educational activity relating to health care and available health care coverage.

SECTION 11. Subsection (d), Section 531.0214, Government Code, is amended to read as follows:

(d) The commission shall develop the database system in a manner that will enable a complete analysis of the use of prescription medications~~[-including information relating to:~~

~~[(1) Medicaid clients for whom more than three medications have been prescribed; and~~

~~[(2) the medical effect denial of Medicaid coverage for more than three medications has had on Medicaid clients].~~

SECTION 12. Subsection (a), Section 531.026, Government Code, is amended to read as follows:

(a) The commission shall prepare and submit to the lieutenant governor, the speaker of the house of representatives, the comptroller, the Legislative Budget Board, [and] the governor's office of budget and planning, each member of the appropriations committees of the senate and house of representatives, and each member of the standing committees of the senate and house of representatives with responsibility for oversight of health and human services issues ~~[governor]~~ a consolidated health and human services budget recommendation not later than October 15 of each even-numbered year.

SECTION 13. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0261 to read as follows:

Sec. 531.0261. CONSOLIDATED MEDICAID APPROPRIATIONS REQUEST.

(a) The commission shall include in the consolidated budget recommendation required by Section 531.026 a consolidated Medicaid appropriations request for the subsequent fiscal biennium.

(b) The commission shall:

(1) develop the consolidated Medicaid appropriations request with input from the Legislative Budget Board and the governor's office of budget and planning to ensure that relevant information for acute and long-term care Medicaid programs relating to caseloads, costs, measures, rates, waivers, and eligibility is reflected; and

(2) provide assistance with the legislative appropriations process by revising the consolidated Medicaid appropriations request each time that revised caseload and cost estimates relating to the Medicaid program are prepared.

SECTION 14. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0272 to read as follows:

Sec. 531.0272. COMPREHENSIVE MEDICAID OPERATING BUDGET; QUARTERLY EXPENDITURE REPORTS. (a) The commission shall prepare a comprehensive Medicaid operating budget at the beginning of each fiscal year, with input as appropriate from each health and human services agency that receives legislative appropriations relating to the Medicaid program.

(b) The commission shall monitor all Medicaid expenditures by the commission and health and human services agencies and submit quarterly Medicaid expenditure reports to the lieutenant governor, the speaker of the house of representatives, the comptroller, the Legislative Budget Board, the governor's office of budget and planning, each member of the appropriations committees of the senate and house of representatives, and each member of the standing committees of the senate and house of representatives with responsibility for oversight of health and human services issues.

(c) The commission shall prepare the comprehensive Medicaid operating budget and quarterly Medicaid expenditure reports with input from the Legislative Budget Board and the governor's office of budget and planning to ensure that the information described by Section 531.0261(b)(1) is reflected.

SECTION 15. Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.055 and 531.056 to read as follows:

Sec. 531.055. MEDICAID REIMBURSEMENT RATES REPORT. Not later than December 1 of each even-numbered year, the commission shall prepare and deliver to the governor, the lieutenant governor, the speaker of the house of representatives, and each member of the legislature a report that:

(1) identifies the Medicaid provider reimbursement rates established by rule for each county in this state and the rates paid to providers by managed care organizations contracting with the commission under Chapter 533 in each affected area of the state;

(2) compares the rates identified under Subdivision (1) to:

(A) the rates paid by other health care payors, including Medicare, in the same county or affected area of the state for comparable services provided to comparable populations; and

(B) the appropriate Medicaid rates of the top 15 industrial states as ranked by the United States Department of Commerce Bureau of Economic Analysis based on gross state product;

(3) includes information necessary to permit an accurate comparison of reimbursement provided to pharmacies participating in the vendor drug program, including information relating to dispensing fees, brand name drug product cost definitions, generic drug product cost definitions, any other reimbursements or deductions, and total reimbursements for the top 25 brand name drug prescriptions and for the top 25 generic drug prescriptions; and

(4) includes information resulting from cost reports obtained from a statistically valid sample of pharmacies participating in the vendor drug program that specify the costs of the pharmacies in preparing and dispensing prescriptions and providing other pharmacy services, including drug therapy management.

Sec. 531.056. MIGRANT CARE NETWORK STUDY; PILOT PROGRAM. (a) In this section, "migrant or seasonal agricultural worker" means an individual who:

(1) is working or available for work seasonally or temporarily in primarily an agricultural or agriculture-related industry; and

(2) moves one or more times from one place to another to perform seasonal or temporary employment or to be available for seasonal or temporary employment.

(b) The commission shall conduct a study regarding the feasibility of contracting with one or more existing networks of health care providers located in this state and in other states to establish a migrant care network to provide health care services to children of migrant or seasonal agricultural workers who are residents of this state and intend to return to this state at the conclusion of temporary or seasonal employment in another state and who are:

(1) recipients of medical assistance under Chapter 32, Human Resources Code; or

(2) enrollees in the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan program under Chapter 63, Health and Safety Code.

(c) In conducting the study under this section, the commission shall:

(1) consider migrant work patterns to determine in which states the migrant care network is most needed to adequately provide the medical assistance, child health plan coverage, or health benefits plan coverage;

(2) examine the necessity and fiscal effect of entering into interstate agreements to establish the migrant care network; and

(3) determine whether ensuring the provision of health care services under the medical assistance program, the child health plan program, and the health benefits plan program for children of migrant or seasonal agricultural workers during the time in which a child is outside of this state is necessary to maintain continuity of care for the child.

(d) If, based on the results of the study under this section, the commission determines that the establishment of a migrant care network is feasible, the commission shall develop and implement a pilot program for that purpose. The commission by rule shall establish eligibility criteria for participation in the pilot program.

(e) The commission shall report its findings and recommendations regarding the establishment of a migrant care network to the governor, the lieutenant governor, and the standing committees of the senate and house of representatives having primary jurisdiction over the commission. The commission shall make the report:

(1) on completion of the study required by this section if the commission determines that the establishment of the migrant care network is not feasible; or

(2) on implementation of the pilot program required by this section if the commission determines that the establishment of the migrant care network is feasible.

(f) This section expires September 1, 2003.

SECTION 16. (a) The purpose of this section is to pilot a coordinated approach to addressing the needs of homeless people with chronic illnesses who are recipients of medical assistance under Chapter 32, Human Resources Code, so that homeless people may learn to manage their illnesses and become productive members of society. Current state, federal, and local agencies fund separate programs that address only one aspect of the needs of homeless people, such as housing, job training, and medical care. Homeless people with chronic illnesses will benefit from a coordinated approach that comprehensively addresses the needs of homeless people.

(b) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.057 to read as follows:

Sec. 531.057. PILOT CASE MANAGEMENT PROGRAM. (a) The commission, in cooperation with the Texas Interagency Council for the Homeless, shall develop a pilot case management program for homeless people who have chronic illnesses, including diabetes and HIV infection or AIDS, and who are recipients of medical assistance under Chapter 32, Human Resources Code. The council in cooperation with relevant state agencies shall administer the pilot program under the direction of the commission.

(b) Using existing resources of the agencies composing the council, the staff of the council shall:

(1) select a county with a population of more than 2.8 million in which to implement the program;

(2) identify existing services provided through programs of the agencies composing the council to homeless people with chronic illnesses who are recipients of medical assistance;

(3) identify existing federal, state, county, and local sources from which money may be available to fund the pilot program; and

(4) create a pilot case management program for not more than 75 homeless people with chronic illnesses who are recipients of medical assistance using existing financial and agency resources.

(c) The council shall select, through competitive bidding, a nonprofit entity to implement the pilot case management program for the homeless. The pilot program established under this section must:

(1) provide case management services and existing health-related education services to participants of the program; and

(2) coordinate housing, medical, job training, and other necessary services for the participants of the program.

(d) The commission shall identify programs available through health and human services agencies through which homeless people described by Subsection (a) may receive housing, medical, job placement, or other services. The commission shall report to the council information regarding the identified programs, including the programs' sources of funding and eligibility requirements.

(e) Not later than December 15 of each even-numbered year, the council shall submit a report to the governor, the lieutenant governor, and the speaker of the house of representatives regarding the effectiveness of the pilot program established under this section.

(f) This section expires September 1, 2005.

(c) The Health and Human Services Commission shall develop and the Texas Interagency Council for the Homeless shall implement the pilot program established under this section not later than November 1, 2001.

SECTION 17. The heading to Chapter 533, Government Code, is amended to read as follows:

CHAPTER 533. DEVELOPMENT AND IMPLEMENTATION  
OF MEDICAID MANAGED CARE PROGRAM

SECTION 18. Subchapter A, Chapter 533, Government Code, is amended by amending Sections 533.001 and 533.002 and adding Sections 533.0021, 533.0022, and 533.0023 to read as follows:

Sec. 533.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission or an agency operating part of the state Medicaid managed care program, as appropriate.

(2) "Commissioner" means the commissioner of health and human services.

(3) "Health and human services agencies" has the meaning assigned by Section 531.001.

(4) "Managed care organization" means a person who is authorized or otherwise permitted by law to arrange for or provide a managed care plan. The term includes a health care system established under Chapter 20C, Insurance Code.

(5) "Managed care plan" means a plan under which a person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services. A part of the plan must consist of arranging for or providing health care services as distinguished from indemnification against the cost of those services on a prepaid basis through insurance or otherwise. The term includes a primary care case management provider network and a health care system established under Chapter 20C, Insurance Code. The term does not include a plan that indemnifies a person for the cost of health care services through insurance.

(6) "Recipient" means a recipient of medical assistance under Chapter 32, Human Resources Code.

(7) "Health care service region" or "region" means a Medicaid managed care service area as delineated by the commission.

Sec. 533.002. MEDICAID HEALTH CARE DELIVERY SYSTEM. The commission may develop a health care delivery system that restructures the delivery of health care services provided under the state Medicaid program.

Sec. 533.0021. DESIGN AND DEVELOPMENT OF HEALTH CARE DELIVERY SYSTEM. In developing the health care delivery system under this chapter, the commission shall:

(1) design the system in a manner that:

(A) improves the health of the people of this state by:

(i) emphasizing prevention;

(ii) promoting continuity of care; and

(iii) providing a medical home for recipients;

(B) ensures that each recipient receives high-quality, comprehensive health care services in the recipient's local community; and

(C) ensures that the community supports the implementation of the system in the health care service region, to be ascertained through a public hearing in the community at which the commission takes public comment from health care consumers and physicians and other health care providers;

(2) to the extent that it is cost-effective to this state and local governments:

(A) maximize the financing of the state Medicaid program by obtaining federal matching funds for all resources or other money available for matching; and

(B) expand Medicaid eligibility to include persons who were eligible to receive indigent health care services through the use of those resources or other money available for matching before expansion of eligibility; and

(3) develop and prepare the waiver or other documents necessary to obtain federal authorization for the system.

Sec. 533.0022. PURPOSE. The commission shall implement the Medicaid managed care program as part of the health care delivery system developed under this chapter [Chapter 532] by contracting with managed care organizations in a manner that, to the extent possible:

(1) accomplishes the goals described by Section 533.0021 [improves the health of Texans by:

[(A) emphasizing prevention;

[(B) promoting continuity of care; and

[(C) providing a medical home for recipients;

[(2) ensures that each recipient receives high quality, comprehensive health care services in the recipient's local community];

(2) [(3)] encourages the training of and access to primary care physicians and providers;

(3) [(4)] maximizes cooperation with existing public health entities, including local departments of health and community mental health and mental retardation centers established under Chapter 534, Health and Safety Code;

(4) [(5)] provides incentives to managed care organizations to improve the quality of health care services for recipients by providing value-added services; and]

(5) [(6)] reduces administrative and other nonfinancial barriers for recipients in obtaining health care services; and

(6) controls the costs associated with the state Medicaid program.

Sec. 533.0023. RULES FOR HEALTH CARE DELIVERY SYSTEM. The commissioner of insurance shall adopt rules as necessary or appropriate to carry out the functions of the Texas Department of Insurance under this chapter.

SECTION 19. Section 533.003, Government Code, is amended to read as follows:

Sec. 533.003. CONSIDERATIONS IN AWARDING CONTRACTS. (a) In awarding contracts to managed care organizations, the commission shall:

(1) give preference to organizations that have significant participation in the organization's provider network from each health care provider in the region who has traditionally provided care to Medicaid and charity care patients;

(2) give extra consideration to organizations that agree to assure continuity of care for at least three months beyond the period of Medicaid eligibility for recipients;

(3) consider the need to use different managed care plans to meet the needs of different populations; and

(4) consider the ability of organizations to process Medicaid claims electronically.

(b) The commission may not award a contract to or renew a contract with a managed care organization that, after July 1, 2001, has a policy that the usual and customary reimbursement rate for a health care provider who is outside the organization's provider network is equal to the lowest contracted rate the organization

has negotiated with a provider who is in the network in the same health care service region.

SECTION 20. Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.0035 to read as follows:

Sec. 533.0035. LIMITATION ON NUMBER OF CONTRACTS AWARDED. The commission shall:

(1) evaluate the number of managed care organizations with which the commission contracts to provide health care services in each health care service region, focusing particularly on the market share of those managed care organizations; and

(2) limit the number of contracts awarded to managed care organizations under this chapter in a manner that promotes the successful implementation of the delivery of health care services through the state Medicaid managed care program.

SECTION 21. (a) Section 533.005, Government Code, is amended to read as follows:

Sec. 533.005. REQUIRED CONTRACT PROVISIONS. A contract between a managed care organization and the commission for the organization to provide health care services to recipients must contain:

(1) procedures to ensure accountability to the state for the provision of health care services, including procedures for financial reporting, quality assurance, utilization review, and assurance of contract and subcontract compliance;

(2) capitation and provider payment rates that ensure the cost-effective provision of quality health care;

(3) a requirement that the managed care organization provide ready access to a person who assists recipients in resolving issues relating to enrollment, plan administration, education and training, access to services, and grievance procedures;

(4) a requirement that the managed care organization provide ready access to a person who assists providers in resolving issues relating to payment, plan administration, education and training, and grievance procedures;

(5) a requirement that the managed care organization provide information and referral about the availability of educational, social, and other community services that could benefit a recipient;

(6) procedures for recipient outreach and education;

(7) a requirement that the managed care organization make payment to a physician or provider for health care services rendered to a recipient under a managed care plan not later than the 45th day after the date a claim for payment is received with documentation reasonably necessary for the managed care organization to process the claim, or within a period, not to exceed 60 days, specified by a written agreement between the physician or provider and the managed care organization;

(8) a requirement that the commission, on the date of a recipient's enrollment in a managed care plan issued by the managed care organization, inform the organization of the recipient's Medicaid certification date;

(9) a requirement that the managed care organization comply with Section 533.006 as a condition of contract retention and renewal; ~~and~~

(10) a requirement that the managed care organization provide the information required by Section 533.012 and otherwise comply and cooperate with the commission's office of investigations and enforcement;

(11) a requirement that the managed care organization or managed care plan reimburse health care providers for medical screening and stabilization of an emergency medical or psychiatric condition and not use a triage method of reimbursement; and

(12) a process by which the commission is required to:

(A) provide in writing to the managed care organization the projected fiscal impact on the state and managed care organizations that contract with the commission under this chapter of proposed Medicaid managed care program, benefit, or contract changes; and

(B) negotiate in good faith regarding appropriate operational and financial changes to the contract with the managed care organization before implementing those changes.

(b) The changes in law made by Section 533.005, Government Code, as amended by this Act, apply to a contract between the Health and Human Services Commission and a managed care organization under Chapter 533, Government Code, that is entered into or renewed on or after the effective date of this Act. A contract that is entered into or renewed before the effective date of this Act is governed by the law in effect on the date the contract was entered into or renewed, and the former law is continued in effect for that purpose.

SECTION 22. (a) Subchapter A, Chapter 533, Government Code, is amended by adding Sections 533.0051, 533.0076, 533.0091, 533.0131, and 533.016-533.0208 to read as follows:

Sec. 533.0051. CONTRACT RENEWAL. Before renewing a contract with a managed care organization under this chapter, the commission shall consider:

(1) the managed care organization's:

(A) overall contract compliance;

(B) implementation of simplified administrative processes for health care providers and recipients;

(C) compliance with statutory requirements to promptly reimburse health care providers for covered services provided under the Medicaid managed care program;

(D) compliance with the requirements under Article 3.70-3C, Insurance Code, as added by Chapter 1260, Acts of the 75th Legislature, Regular Session, 1997, and Section 14, Texas Health Maintenance Organization Act (Article 20A.14, Vernon's Texas Insurance Code), to identify advanced practice nurses and physician assistants as providers in the managed care organization's provider network;

(E) financial performance; and

(F) participation in the state child health plan under Chapter 62, Health and Safety Code; and

(2) the level of satisfaction of recipients and health care providers with the managed care organization.

Sec. 533.0076. LIMITATIONS ON RECIPIENT DISENROLLMENT. (a) Except as provided by Subsections (b) and (c), and to the extent permitted by federal law, the commission may prohibit a recipient from disenrolling in a managed care plan under this chapter and enrolling in another managed care plan during the 12-month period after the date the recipient initially enrolls in a plan.

(b) At any time before the 91st day after the date of a recipient's initial enrollment in a managed care plan under this chapter, the recipient may disenroll in that plan for any reason and enroll in another managed care plan under this chapter.

(c) The commission shall allow a recipient who is enrolled in a managed care plan under this chapter to disenroll in that plan at any time for cause in accordance with federal law.

Sec. 533.0091. UNIFORM STANDARDS FOR IDENTIFYING RECIPIENTS WITH DISABILITIES OR CHRONIC CONDITIONS. (a) The commission shall collaborate with managed care organizations that contract with the commission under this chapter to develop a uniform screening tool to be used by the managed care organizations to identify adult recipients with disabilities or chronic health conditions and assist those recipients in accessing health care services.

(b) The commission, in cooperation with the Texas Department of Health, by rule shall adopt criteria by which to classify a child with certain health conditions as a child with special health care needs. In adopting the criteria, the commission must include children who have:

- (1) severe disabilities;
- (2) severe mental or emotional disorders;
- (3) medically complex or fragile health conditions; or
- (4) rare or chronic health conditions that are likely to last at least one year and result in limitations on the child's functioning and activities when compared to other children of the same age who do not have those conditions.

(c) The commission, in cooperation with the Texas Department of Health, shall:

(1) monitor and assess health care services provided under the state Medicaid managed care program and the medical assistance program under Chapter 32, Human Resources Code, to children with special health care needs as determined by the criteria adopted under Subsection (b);

(2) adopt specific quality of care standards applicable to health care services provided under the state Medicaid managed care program to children described by Subdivision (1); and

(3) undertake initiatives to develop, test, and implement optimum methods for the delivery of appropriate, comprehensive, and cost-effective health care services under the state Medicaid managed care program to children described by Subdivision (1), including initiatives to:

(A) coordinate health care services with educational programs and other social and community services; and

(B) promote family involvement and support.

Sec. 533.0131. USE OF ENCOUNTER DATA IN DETERMINING PREMIUM PAYMENT RATES. (a) In determining premium payment rates and other amounts paid to managed care organizations under a managed care plan, the commission may not base or derive the rates or amounts on or from encounter data, or incorporate in the determination an analysis of encounter data, unless a certifier of encounter data certifies that:

(1) the encounter data for the most recent state fiscal year is complete, accurate, and reliable; and

(2) there is no statistically significant variability in the encounter data attributable to incompleteness, inaccuracy, or another deficiency as compared to equivalent data for similar populations and when evaluated against professionally accepted standards.

(b) For purposes of determining whether data is equivalent data for similar populations under Subsection (a)(2), a certifier of encounter data shall, at a minimum, consider:

(1) the regional variation in utilization patterns of recipients and costs of health care services;

(2) the range and type of health care services to be covered by premium payment rates;

(3) the number of managed care plans in the region; and

(4) the current number of recipients in each region, including the number for each category of recipient.

Sec. 533.016. INTERAGENCY SHARING OF INFORMATION. (a) The commission shall require a health and human services agency implementing the Medicaid managed care program to provide to each other health and human services agency implementing the program information reported to the agency by a managed care organization or health care provider providing services to recipients.

(b) Except as prohibited by federal law, the commission, each health and human services agency implementing the Medicaid managed care program, and the Texas Department of Insurance shall share confidential information, including financial data, that relates to or affects a person who proposes to contract with or has contracted with a state agency or a contractor of a state agency for the purposes of this chapter.

(c) Information shared between agencies under Subsection (b) remains confidential and is not subject to disclosure under Chapter 552.

Sec. 533.017. REDUCTION AND COORDINATION OF REPORTING REQUIREMENTS AND INSPECTION PROCEDURES. (a) The commission shall:

(1) streamline on-site inspection procedures of managed care organizations contracting with the commission under this chapter;

(2) streamline reporting requirements for managed care organizations contracting with the commission under this chapter, including:

(A) combining information required to be reported into a quarterly management report;

(B) eliminating unnecessary or duplicative reporting requirements; and

(C) to the extent feasible, allowing managed care organizations contracting with the commission under this chapter to submit reports electronically;

(3) require managed care organizations contracting with the commission under this chapter to streamline administrative processes required of health care providers, including:

(A) simplifying and standardizing, to the extent reasonably feasible, the forms providers are required to complete, including forms for preauthorization for covered services;

(B) eliminating unnecessary or duplicative reporting requirements; and

(C) encouraging the adoption of collaboratively developed uniform forms; and

(4) designate one entity to which managed care organizations contracting with the commission under this chapter may report encounter data.

(b) Except as provided by Subsection (d), the commission and the Texas Department of Insurance and contractors of the commission or department may not schedule, initiate, prepare for, or conduct a documentary, electronic, or on-site review, a readiness, compliance, or performance review, or any other review, audit, or examination of a managed care organization contracting with the commission under this chapter until:

(1) the commission, the department, and, if appropriate, each health and human services agency implementing a part of the Medicaid managed care program enter into a memorandum of understanding under Section 533.018; and

(2) the agencies described by Subdivision (1) provide that memorandum to the managed care organization.

(c) Notwithstanding Subsection (b), the commission or the Texas Department of Insurance may take any action:

(1) otherwise authorized by law to protect the safety of a recipient; or

(2) with respect to a managed care organization determined to be in a hazardous financial condition.

(d) The commission and the Texas Department of Insurance may review monthly, quarterly, or annual reports required to be filed by managed care organizations contracting with the commission under this chapter.

Sec. 533.018. MEMORANDUM OF UNDERSTANDING REGARDING COORDINATION OF REPORTING REQUIREMENTS AND INSPECTION PROCEDURES. (a) The commission, the Texas Department of Insurance, and, if appropriate, each health and human services agency implementing a part of the Medicaid managed care program shall enter into a memorandum of understanding that outlines methods to:

(1) maximize interagency coordination in conducting reviews of managed care organizations contracting with the commission under this chapter; and

(2) eliminate and prevent duplicative monitoring, regulation, and enforcement policies and processes with respect to those managed care organizations.

(b) The memorandum of understanding under this section must:

(1) ensure that managed care organizations contracting with the commission under this chapter are not required to file the same or similar information with more than one state agency;

(2) maximize the use of electronic filing of information by managed care organizations contracting with the commission under this chapter;

(3) specifically identify all information, documents, and reports that managed care organizations contracting with the commission under this chapter are required to file with state agencies, either electronically or otherwise, and describe the information, documents, or reports and the authority for the filing requirement;

(4) ensure that regularly scheduled, comprehensive compliance monitoring of and enforcement efforts with respect to managed care organizations contracting with the commission under this chapter:

(A) are highly coordinated between the agencies entering into the memorandum of understanding and consolidate similar monitoring and enforcement functions of each agency in a unified, streamlined process; and

(B) do not require duplication of efforts of agency employees or contractors or the managed care organizations;

(5) include as an attachment the operational and financial audit instrument to be developed under Section 533.019;

(6) specify in detail the process by which the commission and the Texas Department of Insurance will amend the operational and financial audit instrument developed under Section 533.019;

(7) specify in detail the process by which the commission and the Texas Department of Insurance will jointly schedule a single on-site visit that satisfies the requirements of all state agencies regarding regularly scheduled, comprehensive compliance monitoring of and enforcement efforts with respect to managed care organizations contracting with the commission under this chapter;

(8) specify in detail the process by which the commission and the Texas Department of Insurance will coordinate with respect to:

(A) focus studies, market conduct investigations, data calls, and any type of ad hoc requests for information from or performance reviews of a managed care organization that contracts with the commission under this chapter;

(B) investigations of complaints regarding a managed care organization that contracts with the commission under this chapter, both before and during the investigation; and

(C) the development and implementation of corrective action plans for and enforcement actions against a managed care organization that contracts with the commission under this chapter;

(9) specify the manner in which the commission and the Texas Department of Insurance will:

(A) ensure the regular exchange of information between the commission, the department, and each health and human services agency that operates a part of the Medicaid managed care program, including information regarding:

(i) the names of and contact information for agency staff members having monitoring and enforcement responsibilities with respect to managed care organizations that contract with the commission under this chapter; and

(ii) each agency staff member responsible for collecting and distributing information to be exchanged and the frequency with which that information will be exchanged;

(B) schedule and conduct regular, periodic interagency briefings by electronic notice or otherwise to assist agency staff members in:

(i) remaining informed regarding current monitoring and enforcement activities; and

(ii) coordinating monitoring and enforcement activities, including coordinating persons who will participate in the activities, and the frequency with which the activities will be conducted;

(C) schedule and conduct interagency orientation and training to ensure that agency staff members are familiar with:

(i) the obligation to eliminate and prevent duplicative monitoring and enforcement activities;

(ii) the general regulatory responsibilities of each agency; and

(iii) resources for maintaining coordination between the agencies;

(D) ensure that the agencies eliminate and prevent duplication of efforts by agency employees and contractors and managed care organizations that contract with the commission under this chapter with respect to the activities of contractors who communicate or interact with the managed care organizations; and

(E) ensure coordination to eliminate and prevent duplication regarding policy development and implementation, procurement, cost estimates, electronic systems issues, and monitoring and enforcement activities with respect to managed care organizations that serve recipients as well as enrollees in the state child health plan under Chapter 62, Health and Safety Code; and

(10) describe the process by which the commission and the Texas Department of Insurance will collaborate to:

(A) identify statutory barriers to eliminating or preventing duplicative public and private monitoring and enforcement activities with respect to managed care organizations that contract with the commission under this chapter; and

(B) develop recommendations for legislation regarding removing the barriers described by Paragraph (A).

Sec. 533.019. OPERATIONAL AND FINANCIAL AUDIT INSTRUMENT.

(a) The commission and the Texas Department of Insurance shall develop and use an operational and financial audit instrument for regularly scheduled, comprehensive, on-site readiness, performance, or compliance reviews, or other reviews, audits, or examinations of managed care organizations that contract with the commission under this chapter.

(b) In developing the operational and financial audit instrument, the commission and the Texas Department of Insurance must include:

(1) a method to assess compliance with each applicable federal and state law and each applicable accreditation and contractual requirement, including financial, actuarial, operational, and quality of care requirements, the agencies are authorized to enforce at least on a periodic basis;

(2) a method to assess compliance of documents, records, and electronic files the commission or the Texas Department of Insurance requires managed care organizations that contract with the commission under this chapter to submit for review, either before or as an alternative to an on-site review, audit, or examination; and

(3) a method to assess compliance through on-site reviews, audits, and examinations, including document review, electronic systems testing or review, and observation and interviews of managed care organization employees.

(c) The commission and the Texas Department of Insurance may contract on a competitive bid basis with a consultant not affiliated with the commission or department to develop the operational and financial audit instrument required by this section.

Sec. 533.020. PREAUTHORIZATION FOR CERTAIN SERVICES NOT REQUIRED. The commission, in consultation with physicians, hospitals, and managed care organizations contracting with the commission under this chapter, shall develop:

(1) a process by which the managed care organizations eliminate preauthorization processes for covered services that are considered to be routine services; and

(2) a process by which to notify health care providers of covered services under the Medicaid managed care program for which preauthorization is not required.

Sec. 533.0201. UTILIZATION REVIEW UNDER PRIMARY CARE CASE MANAGEMENT NETWORK. To the extent allowed by federal law, the commission shall require a managed care organization that contracts with the commission under this chapter and that provides health care services to recipients through a primary care case management network to conduct utilization review of those services in accordance with Article 21.58A, Insurance Code.

Sec. 533.0202. NOTICE OF DETERMINATIONS MADE BY UTILIZATION REVIEW AGENTS. (a) In this section, "utilization review agent" has the meaning assigned by Section 2, Article 21.58A, Insurance Code.

(b) A utilization review agent shall notify a recipient or a person acting on behalf of the recipient and the recipient's health care provider of a utilization review determination in accordance with this section and Section 5(a), Article 21.58A, Insurance Code, with respect to services provided under the state Medicaid managed care program.

(c) If the utilization review agent makes an adverse determination, the notice required by this section must include:

- (1) the principal reasons for the adverse determination;
- (2) the clinical basis for the adverse determination;
- (3) a description or the source of the screening criteria used as guidelines in making the determination; and
- (4) a description of the procedure for the complaint and appeal process, including a description provided to the recipient of:
  - (A) the recipient's right to a Medicaid fair hearing at any time; and
  - (B) the procedures for appealing an adverse determination at a Medicaid fair hearing.

(d) The utilization review agent must provide notice of an adverse determination:

(1) to the recipient and the recipient's health care provider of record by telephone or electronic transmission not later than the next business day after the date the determination is made if the recipient is hospitalized when the determination is made, to be followed not later than the third business day after the date the determination is made by a written notice of the determination;

(2) to the recipient and the recipient's health care provider of record by written notice not later than the third business day after the date the determination is made if the recipient is not hospitalized when the determination is made; or

(3) to the recipient's treating physician or health care provider within the time appropriate to the circumstances that relate to the delivery of the services and the condition of the patient, but not later than one hour after the recipient's treating physician or provider requests poststabilization care following emergency treatment.

(e) The commissioner shall adopt rules to implement this section.

Sec. 533.0203. COMPLAINT INFORMATION. (a) The commission, in cooperation with the Texas Department of Insurance and any other appropriate entity, shall collect complaint data, including complaint resolution rates, regarding managed care organizations contracting with the commission under this chapter. In entering into or renewing a contract with a managed care organization under this chapter, the commission may include provisions in the contract to accomplish the purposes of this section.

(b) The commission shall report on a quarterly basis the complaint data collected under Subsection (a) to the state Medicaid managed care advisory committee under Subchapter C.

(c) Not later than December 1 of each even-numbered year, the commission shall report to the legislature the complaint data collected under Subsection (a). The report may be consolidated with any other report relating to the same subject matter the commission is required to submit under other law.

Sec. 533.0204. PROVIDER REPORTING OF ENCOUNTER DATA. The commission shall collaborate with managed care organizations that contract with the commission and health care providers under the organizations' provider networks to develop incentives and mechanisms to encourage providers to report complete and accurate encounter data to managed care organizations in a timely manner.

Sec. 533.0205. QUALIFICATIONS OF CERTIFIER OF ENCOUNTER DATA. (a) The person acting as the state Medicaid director shall appoint a person as the certifier of encounter data.

(b) The certifier of encounter data must have:

(1) demonstrated expertise in estimating premium payment rates paid to a managed care organization under a managed care plan; and

(2) access to actuarial expertise, including expertise in estimating premium payment rates paid to a managed care organization under a managed care plan.

(c) A person may not be appointed under this section as the certifier of encounter data if the person participated with the commission in developing premium payment rates for managed care organizations under managed care plans in this state during the three-year period before the date the certifier is appointed.

Sec. 533.0206. CERTIFICATION OF ENCOUNTER DATA. (a) The certifier of encounter data shall certify the completeness, accuracy, and reliability of encounter data for each state fiscal year.

(b) The commission shall make available to the certifier all records and data the certifier considers appropriate for evaluating whether to certify the encounter data. The commission shall provide to the certifier selected resources and assistance in obtaining, compiling, and interpreting the records and data.

Sec. 533.0207. IMPLEMENTATION OF CERTAIN MANAGED CARE PLANS IN CERTAIN COUNTIES. (a) Notwithstanding any other law, before implementing a Medicaid managed care plan that uses capitation as a method of payment in a county with a population of less than 100,000, the commission must determine that implementation is economically efficient.

(b) Notwithstanding Subsection (a), the commission may continue implementation of a Medicaid managed care plan described by Subsection (a) in a county with a population of less than 100,000 if implementation of the plan in the county was in progress on January 1, 2001.

Sec. 533.0208. INTEGRATED MENTAL HEALTH FUNDING TO LOCAL MHMR AUTHORITIES. (a) The commission and the Texas Department of Mental Health and Mental Retardation may establish a program that uses direct contracting with units of local government that the department designates as local mental health and mental retardation authorities to allow the authorities to manage all federal, state, and local matching funds for community mental health services to provide more customer choice, an improved array of services at the provider level, improved quality of services, and more cost-effective services.

(b) A local mental health and mental retardation authority shall:

(1) establish an effective process for planning, policy development, and monitoring of the local program that includes consumers and family members; and

(2) maintain an effective local process for planning, policy development, resource management, service contracting, and coordination with other local agencies, including local jails.

(c) The Texas Department of Mental Health and Mental Retardation shall adopt rules to implement the program.

(b) Not later than March 1, 2002, the Health and Human Services Commission, the Texas Department of Insurance, and each appropriate health and human services agency implementing a part of the Medicaid managed care program under Chapter 533, Government Code, shall enter into the memorandum of understanding required by Section 533.018, Government Code, as added by this Act.

(c) Not later than March 1, 2002, the Health and Human Services Commission and the Texas Department of Insurance shall develop the operational and financial audit instrument required by Section 533.019, Government Code, as added by this Act.

(d) The changes in law made by Section 533.0202, Government Code, as added by this Act, apply to a contract between the Health and Human Services Commission and a managed care organization under Chapter 533, Government Code, that is entered into or renewed on or after the effective date of this Act. A contract that is entered into or renewed before the effective date of this Act is governed by the law in effect on the date the contract was entered into or renewed, and the former law is continued in effect for that purpose.

(e) Not later than January 1, 2002, the person acting as the state Medicaid director shall appoint the certifier of Medicaid managed care encounter data required by Section 533.0205, Government Code, as added by this Act.

(f) The agencies responsible for implementing Section 533.0208, Government Code, as added by this Act, shall request and actively pursue any necessary waivers or authorizations from the Health Care Financing Administration or other appropriate entities to enable the agencies to implement that section not later than September 1, 2002. The agencies may delay implementing Section 533.0208, Government Code, as added by this Act, until the necessary waivers or authorizations are granted.

SECTION 23. Subsection (a), Section 533.041, Government Code, is amended to read as follows:

(a) The commission shall appoint a state Medicaid managed care advisory committee. The advisory committee consists of representatives of:

- (1) hospitals;
- (2) managed care organizations;
- (3) primary care providers;
- (4) state agencies;
- (5) consumer advocates representing low-income recipients;
- (6) consumer advocates representing recipients with a disability;
- (7) parents of children who are recipients;
- (8) rural providers;
- (9) advocates for children with special health care needs;
- (10) pediatric health care providers, including specialty providers;
- (11) long-term care providers, including nursing home providers;
- (12) obstetrical care providers;
- (13) community-based organizations serving low-income children and their families; ~~and~~
- (14) community-based organizations engaged in perinatal services and outreach;
- (15) medically underserved communities; and
- (16) community mental health and mental retardation centers established under Subchapter A, Chapter 534, Health and Safety Code.

SECTION 24. (a) The commissioner of health and human services shall conduct a study regarding the feasibility of expanding the medical assistance program under Chapter 32, Human Resources Code, to provide medical assistance to disabled children 18 years of age or younger in accordance with 42 U.S.C. Section 1396a(e)(3), as amended.

(b) In conducting the study, the commissioner shall evaluate:

- (1) the number of children who would be eligible for medical assistance under the expanded program and who would be likely to enroll;

(2) the effect of other health insurance coverage provided for children who would be eligible under the expanded medical assistance program on the cost of expanding the program;

(3) utilization patterns of similar populations of disabled children under similar programs in this state and other states;

(4) the cost to the state of inappropriate institutionalization of disabled children resulting from unavailability of health insurance coverage for those children; and

(5) options for setting an income eligibility cap for the expanded medical assistance program.

(c) Not later than December 1, 2002, the commissioner shall submit a report to the legislature regarding the results of the study conducted under this section. The report must include a recommendation regarding expanding the medical assistance program to provide that assistance to disabled children in accordance with 42 U.S.C. Section 1396a(e)(3), as amended.

SECTION 25. On January 1, 2002, or on an earlier date specified by the Health and Human Services Commission:

(1) all powers, duties, functions, activities, obligations, rights, contracts, records, employees, property, and appropriations and other money of the Texas Department of Health that are determined by the commissioner of health and human services to be essential to the administration of Medicaid acute care services or the Medicaid vendor drug program are transferred to the Health and Human Services Commission;

(2) a rule or form adopted by the Texas Department of Health that relates to a transferred component of the Medicaid program is a rule or form of the Health and Human Services Commission and remains in effect until altered by the commission;

(3) a reference in law or an administrative rule to the Texas Department of Health that relates to a transferred component of the Medicaid program means the Health and Human Services Commission;

(4) a license, permit, or certification in effect that was issued by the Texas Department of Health that relates to a transferred component of the Medicaid program is continued in effect as a license, permit, or certification of the Health and Human Services Commission; and

(5) a complaint, investigation, or other proceeding pending before the Texas Department of Health that relates to a transferred component of the Medicaid program is transferred without change in status to the Health and Human Services Commission.

SECTION 26. (a) Subject to Subsection (b) of this section, 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.

(b) Implementation of Sections 32.053-32.056, Human Resources Code, as added by this Act, is governed by Section 7 of this Act. Implementation of Section 32.057, Human Resources Code, as added by this Act, is governed by Section 8 of this Act. Implementation of Section 533.0208, Government Code, as added by this Act, is governed by Section 22 of this Act.

SECTION 27. Except as otherwise provided by this Act, this Act takes effect September 1, 2001, and applies to a person receiving medical assistance on or after that date regardless of the date on which the person began receiving that medical assistance.

**Floor Amendment No. 1**

Amend **CSSB 1156** as follows:

(1) In the recital of SECTION 1 of the bill (House committee printing, page 1, line 5), strike "Subsections (x) and (y)" and substitute "Subsections (x), (y), and (z)".

(2) In SECTION 1 of the bill, following proposed Section 32.024(y), Human Resources Code (House committee printing, page 2, between lines 8 and 9), insert the following:

(z) The department shall provide hyperbaric oxygen therapy to the extent permitted by federal law.

**Floor Amendment No. 2**

Amend **CSSB 1156** as follows:

(1) In the recital of SECTION 1 of the bill (House committee printing, page 1, line 5), strike "Subsections (x) and (y)" and substitute "Subsection (x)".

(2) In SECTION 1 of the bill, in proposed Section 32.024(x), Human Resources Code (House committee printing, page 1, lines 7-9), strike "the department may not limit benefits for the number of medications prescribed to a recipient of prescription drug benefits under the medical assistance program. In" and substitute "and in".

(3) In SECTION 1 of the bill, in proposed Section 32.024(x), Human Resources Code (House committee printing, page 1, line 10), strike "also".

(4) In SECTION 1 of the bill (House committee printing, page 1, line 21, through page 2, line 8), strike proposed Section 32.024(y), Human Resources Code.

(5) In SECTION 4 of the bill, in proposed Section 32.0271, Human Resources Code (House committee printing, page 7, between lines 1 and 2), insert the following:

(c) A managed care organization or a managed care plan, as those terms are defined by Section 533.001, Government Code, may not by contract or any other method require a physician to use the services of a nurse first assistant in providing care to a recipient of medical assistance.

(6) In SECTION 4 of the bill, in proposed Section 32.0271(c), Human Resources Code (House committee printing, page 7, line 2), strike "(c)" and substitute "(d)".

(7) In SECTION 9(a) of the bill, in proposed Section 531.02103(a)(1), Government Code (House committee printing, page 26, line 12), strike "in areas of the state" and substitute "to areas of the state and to populations".

(8) In SECTION 9(a) of the bill, in proposed Section 531.02103(a)(3), Government Code (House committee printing, page 26, line 19), strike "+ Plus".

(9) In SECTION 9(a) of the bill, in proposed Section 531.02103(a)(6), Government Code (House committee printing, page 27, lines 3 and 4), strike " provided that the initiatives may not apply to pharmacies participating in the vendor drug program".

(10) In SECTION 9(a) of the bill, in proposed Section 531.02103(a)(9), Government Code (House committee printing, page 27, line 14), between "services" and "as necessary", insert ", including use of prior authorization requirements,".

(11) In SECTION 9(a) of the bill, in proposed Section 531.02103(a)(12), Government Code (House committee printing, page 27, lines 21-23), strike "by not more than five percent for cases that exceed the established rate of reimbursement".

(12) In SECTION 9(a) of the bill, in proposed Section 531.02103(b), Government Code (House committee printing, page 27, lines 26 and 27), strike "and shall solicit input on the need for and effect of those strategies".

(13) In SECTION 9(a) of the bill, in proposed Section 531.02103(b), Government Code (House committee printing, page 28, line 1), strike "may use" and substitute "shall use".

(14) In SECTION 9(a) of the bill, in proposed Section 531.02103(b), Government Code (House committee printing, page 28, lines 2-4), strike "or may hold public hearings in the development of agency rules and procedures and necessary state plan amendments or waivers".

(15) In SECTION 9(a) of the bill, in proposed Section 531.02103, Government Code (House committee printing, page 28, between lines 4 and 5), insert the following:

(c) The commission shall hold public hearings at least quarterly regarding the development and implementation of strategies under Subsection (a) and the development of agency procedures and necessary state plan amendments or waivers. If the commission proposes to adopt a rule necessary to implement a strategy under Subsection (a), the commission shall adopt the rule in accordance with Chapter 2001 and hold any public hearing required by that chapter.

(16) In SECTION 9(a) of the bill (House committee printing, page 29, line 22, through page 30, line 15), strike proposed Section 531.02106, Government Code, and substitute the following:

Sec. 531.02106. LIMITS ON MEDICAID COST-SHARING. Before requiring Medicaid recipients to make copayments or comply with other cost-sharing requirements, the commission by rule shall establish monthly limits on total copayments and other cost-sharing requirements.

(17) In SECTION 10 of the bill, in proposed Section 531.02131, Government Code (House committee printing, page 31, lines 3-12), strike Subsections (b), (c), and (d).

(18) In SECTION 10 of the bill, in proposed Section 531.02131(e), Government Code (House committee printing, page 31, line 13), strike "(e) To the extent feasible and appropriate, the" and substitute "(b) The".

(19) In SECTION 15 of the bill, in proposed Section 531.055, Government Code (House committee printing, page 34, lines 4-17), strike Subdivisions (1) and (2) and substitute the following:

(1) identifies the Medicaid provider reimbursement rates established by rule for each county in this state and the premiums paid to Medicaid managed care organizations in this state;

(2) compares the rates and premiums identified under Subdivision (1) to:

(A) the rates and premiums paid by other health care payors, including Medicare, in the same county or other relevant area of the state for comparable services provided to comparable populations; and

(B) the appropriate Medicaid rates of the top 15 industrial states as ranked by the United States Department of Commerce Bureau of Economic Analysis based on gross state product;

(20) In the recital of SECTION 18 of the bill (House committee printing, page 39, line 19), strike "Sections 533.0021, 533.0022, and 533.0023" and substitute "Sections 533.0021, 533.0022, 533.0023, and 533.0024".

(21) In SECTION 18 of the bill, in proposed Section 533.0021(1), Government Code (House committee printing, page 41, lines 9-13), strike Paragraph (C) and substitute the following:

(C) ensures that the community is given an opportunity to provide input and participate in the implementation of the system in the health care service region by holding public hearings in the community at which the commission takes public comment from all persons interested in the implementation of the system;

(22) In SECTION 18 of the bill, in proposed Section 533.0023, Government Code (House committee printing, page 42, line 25), between "SYSTEM." and "The", insert "(a)".

(23) In SECTION 18 of the bill, at the end of proposed Section 533.0023, Government Code (House committee printing, page 43, between lines 1 and 2), insert the following:

(b) The commissioner of health and human services shall adopt rules and obtain public input in accordance with Chapter 2001 before making substantive changes to policies or programs under the Medicaid managed care program.

Sec. 533.0024. RESOLUTION OF IMPLEMENTATION ISSUES. The commission shall conduct a meeting at least quarterly with managed care organizations that contract with the commission under this chapter and health care providers to identify and resolve implementation issues with respect to the Medicaid managed care program.

(24) Strike SECTION 19 of the bill (House committee printing, page 43, lines 2-24) and renumber subsequent SECTIONS of the bill accordingly.

(25) In SECTION 21(a) of the bill, in amended Section 533.005, Government Code (House committee printing, page 46, lines 1-13), strike proposed Subdivisions (11) and (12) and substitute the following:

(11) a process by which the commission is required to:

(A) provide in writing to the managed care organization the projected fiscal impact on the state and managed care organizations that contract with the commission under this chapter of proposed Medicaid managed care program, benefit, or contract changes; and

(B) negotiate in good faith regarding appropriate operational and financial changes to the contract with the managed care organization before implementing those changes;

(12) a requirement that the managed care organization providing services to recipients under a Medicaid STAR + Plus pilot program:

(A) have an appropriate number of clinically trained case managers within the Medicaid STAR + Plus pilot program service delivery area to manage medically complex patients; and

(B) implement disease management programs that address the medical conditions of the Medicaid STAR + Plus pilot program population, including persons with HIV infection, AIDS, or sickle cell anemia;

(13) a requirement that the renewal date of the contract coincide with the beginning of the state fiscal year; and

(14) a requirement that the managed care organization reimburse health care providers for an appropriate emergency medical screening that is within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, and that is provided to determine whether:

(A) an emergency medical or psychiatric condition exists; and

(B) additional medical examination and treatment is required to stabilize the emergency medical or psychiatric condition.

(26) In the recital of SECTION 22(a) of the bill (House committee printing, page 46, line 25), strike "533.016-533.0208" and substitute "533.016-533.0207".

(27) In SECTION 22(a) of the bill, in proposed Section 533.018(a)(2), Government Code (House committee printing, page 53, lines 11 and 12), strike "monitoring, regulation," and substitute "monitoring, reporting, reviewing of forms, regulation,".

(28) In SECTION 22(a) of the bill, strike proposed Section 533.018(b), Government Code (House committee printing, page 53, line 14, through page 57, line 6), and substitute the following:

(b) The memorandum of understanding under this section must:

(1) maximize the use of electronic filing of information by managed care organizations contracting with the commission under this chapter;

(2) specify the process by which the commission and the Texas Department of Insurance will jointly schedule a single on-site visit that satisfies the requirements of all state agencies regarding regularly scheduled, comprehensive compliance monitoring of and enforcement efforts with respect to managed care organizations contracting with the commission under this chapter;

(3) require that interagency orientation and training are scheduled and conducted to ensure that agency staff members are familiar with the obligation to eliminate and prevent duplicative monitoring and enforcement activities; and

(4) ensure coordination to eliminate and prevent duplication regarding policy development and implementation, procurement, cost estimates, electronic systems issues, and monitoring and enforcement activities with respect to managed care organizations that serve recipients as well as enrollees in the state child health plan under Chapter 62, Health and Safety Code.

(29) In SECTION 22(a) of the bill, in the heading to proposed Section 533.019, Government Code (House committee printing, page 57, line 7), between "533.019," and "OPERATIONAL", insert "INTEGRATED".

(30) In SECTION 22(a) of the bill, in proposed Section 533.019(a), Government Code (House committee printing, page 57, line 9), strike "an operational and financial" and substitute "an integrated operational and financial".

(31) In SECTION 22(a) of the bill, in proposed Section 533.019(b), Government Code (House committee printing, page 57, line 14), strike "the operational and financial" and substitute "the integrated operational and financial".

(32) In SECTION 22(a) of the bill, in proposed Section 533.019(c), Government Code (House committee printing, page 58, lines 7 and 8), between "the" and "operational and financial", insert "integrated".

(33) In SECTION 22(a) of the bill, strike proposed Section 533.0208, Government Code (House committee printing, page 62, line 20, through page 63, line 12).

(34) In SECTION 22 of the bill, following Subsection (a) of that SECTION (House committee printing, page 63, between lines 12 and 13), insert the following and reletter subsequent subsections of that SECTION accordingly:

(b) Not later than March 1, 2002, the Health and Human Services Commission and each appropriate health and human services agency implementing part of the Medicaid managed care program under Chapter 533, Government Code, shall complete the requirements for reducing and coordinating reporting requirements and inspection procedures as required by Section 533.017, Government Code, as added by this Act.

(35) In SECTION 22(c) of the bill (House committee printing, page 63, line 21), strike "the operational and financial" and substitute "the integrated operational and financial".

(36) Strike SECTION 22(f) of the bill (House committee printing, page 64, lines 9-16).

(37) In SECTION 26(b) of the bill (House committee printing, page 68, lines 5 and 6), strike "Implementation of Section 533.0208, Government Code, as added by this Act, is governed by Section 22 of this Act."

### **Floor Amendment No. 3**

Amend the Coleman amendment No. 2 to **CSSB 1156** by striking Item (10) of the amendment on page 2, lines 9-12, and renumbering subsequent items accordingly.

### **Floor Amendment No. 4**

Amend **CSSB 1156** (House Committee Printing) as follows:

On page 27, line 3 after the word "program." insert "provided that the initiatives shall not apply to a Class A community independent pharmacy or a Class A community chain pharmacy with ten or fewer pharmacies."

### **Floor Amendment No. 5**

Amend **CSSB 1156** as follows:

(1) In the recital to SECTION 2(a) of the bill (House committee printing, page 2, line 9), strike "(a)".

(2) In the recital to SECTION 2(a) of the bill (House committee printing, page 2, line 10), strike "Sections 32.0247 and 32.0248" and substitute "Section 32.0247".

(3) In SECTION 2(a) of the bill, strike proposed Section 32.0248, Human Resources Code (House committee printing, page 3, lines 5-19).

(4) Strike SECTION 2(b) of the bill (House committee printing, page 3, lines 20-25).

### **Floor Amendment No. 6**

Amend **CSSB 1156** as follows:

(1) In SECTION 3 of the bill, in proposed Section 32.0252(c), Human Resources Code (House committee printing, page 5, line 18), strike "The" and substitute "Except as provided by Subsection (d), the".

(2) In SECTION 3 of the bill, in proposed Section 32.0252, Human Resources Code (House committee printing, page 5, between lines 23 and 24), insert the following new Subsection (d) and redesignate subsequent subsections accordingly:

(d) Notwithstanding Subsection (c), the commissioner may apply for federal authorization to allow a designated employee of an entity described by Subsection (a) to make a final determination of eligibility or enroll an eligible person in the program.

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

Amend **CSSB 1156** in SECTION 7(a) of the bill, in proposed Subsection (a), Section 32.056, Human Resources Code (House Committee Printing, page 19, line 15), between "methods" and the semicolon, by inserting the following: that includes:

(A) promoting abstinence as the preferred choice of behavior related to all sexual activity for unmarried persons;

(B) emphasizing abstinence from sexual activity, if used consistently and correctly, is the only method that is 100 percent effective in preventing pregnancy, sexually transmitted diseases, infection with human immunodeficiency virus or acquired immune deficiency syndrome, and the emotional trauma associated with adolescent sexual activity; and

(C) informing single and divorced adults that abstinence from sexual activity before marriage is the most effective way to prevent pregnancy, sexually transmitted diseases, and infection with human immunodeficiency virus or acquired immune deficiency syndrome

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

Amend **CSSB 1156** (House Committee Printing) in SECTION 7 of the bill, in added Section 32.056(b), Human Resources Code (page 20, lines 3-4), by striking "is of childbearing age, as determined by the department" and substituting "is 18 years of age or older".

#### **Floor Amendment No. 11**

Amend **CSSB 1156**, on page 7, between lines 15 and 16 to insert the following:

(3) "Spouse" means a husband, who is a male, or a wife, who is a female. A member of a civil union or similar relationship entered into in another state between persons of the same sex is not a spouse.

#### **Floor Amendment No. 12**

Amend **CSSB 1156** as follows:

(1) In the recital to SECTION 9(a) of the bill (House committee printing, page 24, line 10), strike "Sections 531.02101-531.02106" and substitute "Sections 531.02101-531.02107".

(2) In SECTION 9(a) of the bill, at the end of proposed Section 531.02106, Government Code (House committee printing, page 30, between lines 15 and 16), insert the following:

Sec. 531.02107. AUTHORIZATION FOR EXPANDED MEDICAID COST-SHARING. Notwithstanding any other law, the commissioner may request federal authorization to require all Medicaid recipients to make copayments or comply with other cost-sharing requirements for all services provided under the program in accordance that authorization.

#### **Floor Amendment No. 13**

Amend **CSSB 1156** as follows:

(1) In SECTION 9 of the bill, in added Section 531.02102(a)(1), Government Code (House committee printing, page 25, line 5), strike "three" and substitute "five".

(2) In SECTION 9 of the bill, in added Section 531.02102(a)(2), Government Code (House committee printing, page 25, line 7), strike "three" and substitute "five".

#### **Floor Amendment No. 14**

Amend **CSSB 1156** as follows:

(1) In SECTION 9(a) of the bill, in proposed Section 531.02103(a)(11), Government Code (House committee printing, page 27, line 20), strike "and".

(2) In SECTION 9(a) of the bill, in proposed Section 531.02103(a), Government Code (House committee printing, page 27, line 23), between "reimbursement" and ".", insert the following:

: and

(13) any other strategy designed to improve the quality and cost-effectiveness of the Medicaid program

#### **Floor Amendment No. 15**

Amend **CSSB 1156** as follows:

(1) In SECTION 10 of the bill, in proposed Section 531.02131(a), Government Code (House Committee printing, page 30, line 26), strike "shall" and substitute "may".

(2) In SECTION 10 of the bill, in proposed Section 531.02131(e), Government Code (House Committee printing, page 31, line 14), strike "required by" and substitute "under".

#### **Floor Amendment No. 16**

Amend **CSSB 1156** by striking SECTION 15 of the bill (House committee report, page 33, line 24 through page 37, line 6), renumbering subsequent SECTIONS of the bill accordingly, and making necessary conforming changes to cross-references in SECTION 26(b) of the bill.

#### **Floor Amendment No. 17**

Amend **CSSB 1156** as follows:

(1) In SECTION 18 of the bill, in proposed Section 533.0021(2)(A), Government Code (House committee printing, page 41, line 18), strike "and".

(2) In SECTION 18 of the bill, in proposed Section 533.0021(2), Government Code (House committee printing, page 41, between lines 22 and 23), insert the following:

(C) develop a sliding scale copayment schedule for recipients based on income and other factors determined by the commissioner; and

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

Amend **CSSB 1156** in SECTION 6 of the bill by adding the following appropriately numbered Subsections to the SECTION and by renumbering subsequent Subsections of the SECTION accordingly:

( ) Section 301.104, Labor Code, is amended to read as follows:

Sec. 301.104. ELIGIBILITY. A person is eligible for the refund for wages paid or incurred by the person, during each calendar year for which the refund is claimed, only if:

(1) the wages paid or incurred by the person are for services of an employee who is:

(A) a resident of this state; and

(B) a recipient of:

(i) financial assistance and services in accordance with Chapter 31, Human Resources Code; or

(ii) medical assistance in accordance with Chapter 32, Human Resources Code;

(2) the person satisfies the certification requirements under Section 301.105; and

(3) the person provides and pays for the benefit of the employee a part of the cost of coverage under:

(A) a health plan provided by a health maintenance organization established under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code);

(B) a health benefit plan approved by the commissioner of insurance; [or]

(C) a self-funded or self-insured employee welfare benefit plan that provides health benefits and is established in accordance with the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.); or

(D) a medical savings account authorized under the Health Insurance Portability and Accountability Act of 1996 (26 U.S.C. Section 220).

( ) Section 301.105, Labor Code, is amended to read as follows:

Sec. 301.105. CERTIFICATION. A person is not eligible for the refund for wages paid or incurred by the person unless the person has received a written certification from the commission that the employee is a recipient of financial assistance and services or medical assistance on or before the day the employee begins employment with the person.

( ) A person may claim a refund under Section 301.104, Labor Code, as amended by this Act, only for wages paid or incurred on or after the effective date of this Act.

### **Floor Amendment No. 19**

Amend **CSSB 1156** by adding a new section to read as follows:

(1) SECTION \_\_\_\_\_. The Commissioner of Health and Human Services shall examine the reimbursement methodology for air ambulance services purchased under the medical assistance program and may implement any changes necessary to maintain a viable air ambulance system through the state.

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

Amend **CSSB 1156** on third reading in SECTION 1 of the bill, in added Section 32.024(x), Human Resources Code (House committee printing, page 1, line 8), between "prescribed" and "to a recipient", by inserting "by a physician, a person permitted to prescribe under Subchapter B, Chapter 157, Occupational Code, a dentist, an optometrist, and a podiatrist."

### **Floor Amendment No. 2 on Third Reading**

Amend **CSSB 1156** on third reading as follows:

In SECTION 10 of the bill, in proposed Section 531.02131(a), Government Code (House Committee printing, page 30, line 26), as amended by Second Reading Amendment No. 15, strike "may" and substitute "shall".

### **Floor Amendment No. 3 on Third Reading**

Amend **CSSB 1156**, on third reading, by adding the following appropriately numbered section and renumbering subsequent sections accordingly:

SECTION \_\_\_\_\_. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0471 to read as follows:

Sec. 32.0471. FAMILY PLANNING COUNSELING SERVICES; PROVIDER QUALIFICATIONS. Notwithstanding Section 503.056, Occupations Code, the department shall require that anyone who provides counseling services related to family planning services provided under this chapter must be:

(1) a licensed healthcare provider or a licensed counseling professional; or  
(2) under the supervision of a licensed healthcare professional or a licensed counseling professional.

The amendments were read.

Senator Zaffirini 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 1156** 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 Zaffirini, Chair; Harris, Duncan, Ogden, and Moncrief.

### **SESSION TO CONSIDER EXECUTIVE APPOINTMENTS**

The President announced the time had arrived to consider the executive appointments to agencies, boards, and commissions. Notice of submission of these names for consideration was given yesterday by Senator Nelson.

Senator Nelson moved confirmation of the nominees reported yesterday by the Committee on Nominations.

The President asked if there were requests to sever nominees.

There were no requests offered.

### **NOMINEES CONFIRMED**

The following nominees as reported by the Committee on Nominations were confirmed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Members, Texas School for the Deaf Governing Board: Theresa Johnson, Harris County; Kenneth D. Kesterson, Howard County.

Members, Upper Neches River Municipal Water Authority Board of Directors: Joe M. Crutcher, Anderson County; Robert E. McKelvey, Anderson County.

Presiding Officer, Board of Pardons and Paroles: Gerald Garrett, Travis County.

Members, Board of Pardons and Paroles: James E. Bush, Walker County; Roy Anthony Garcia, Anderson County.

Member, State Cemetery Committee: George E. Christian, Sr., Travis County.

Members, Commission on Jail Standards: Lee Hamilton, Taylor County; Evelyn "Kelly" McVay, Nacogdoches County.

Chair, Texas Diabetes Council: Lawrence B. Harkless, D.P.M., Bexar County.

Members, Texas Diabetes Council: Mary-Ann Galley, Harris County; Lenore Frances Pressman Katz, Dallas County; Margaret G. Pacillas, El Paso County; Jeffrey A. Ross, D.P.M., Harris County.

Members, Texas Board of Architectural Examiners: Gordon E. Landreth, Nueces County; Janet Forgey Parnell, Hemphill County; Linda Diane Steinbrueck, Hays County.

Members, Texas Commission on Private Security: Joan T. Neuhaus, Harris County; Cephus S. "Dusty" Rhodes, El Paso County; Linda J. Sadler, Lubbock County.

### MESSAGE FROM THE HOUSE

#### HOUSE CHAMBER

Austin, Texas

May 23, 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:

**SJR 6**, Proposing a constitutional amendment authorizing the legislature to exempt from ad valorem taxation tangible personal property held at certain locations only temporarily for assembling, manufacturing, processing, or other commercial purposes.

(Amended)

**SJR 32**, Proposing a constitutional amendment authorizing municipalities to donate outdated or surplus firefighting equipment or supplies to underdeveloped countries.

**SJR 49**, Proposing a constitutional amendment to promote uniformity in the collection, deposit, reporting, and remitting of civil and criminal fees.

(Amended)

Respectfully,

/s/Sharon Carter, Chief Clerk  
House of Representatives

## HOUSE CONCURRENT RESOLUTION 297

The President laid before the Senate the following resolution:

**HCR 297**, Instructing the enrolling clerk of the house to make technical corrections to **HB 7**.

SIBLEY

The resolution was read.

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

### GUESTS PRESENTED

Senator Ellis was recognized and introduced to the Senate a delegation of dignitaries from the Federal Republic of Nigeria.

The Senate welcomed its distinguished guests.

### SENATE BILL 2 WITH HOUSE AMENDMENTS

Senator Brown called **SB 2** 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 2** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the development and management of the water resources of the state, including the ratification of the creation of certain groundwater conservation districts; providing penalties.

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

#### ARTICLE 1. TEXAS WATER ADVISORY COUNCIL

SECTION 1.01. Subtitle A, Title 2, Water Code, is amended by adding Chapter 9 to read as follows:

#### CHAPTER 9. TEXAS WATER ADVISORY COUNCIL

Sec. 9.001. DEFINITIONS. In this chapter:

(1) "Authority" means an entity listed in Section 9.010(b).

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

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

(4) "Conjunctive use" means the combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source.

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

Sec. 9.002. CREATION AND MEMBERSHIP. (a) The council consists of 13 members as follows:

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

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

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

(4) the commissioner of agriculture;

(5) the commissioner of the General Land Office;

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

(7) two members of the senate appointed by the lieutenant governor; and

(8) three members of the general public appointed by the governor, one representing groundwater management, one representing surface water management, and one representing the environmental community.

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

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

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

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

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

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

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

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

Sec. 9.006. MEETINGS. (a) The council shall meet at least once in each calendar quarter. Six members constitute a quorum.

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

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

(b) Reimbursement under Subsection (a) is subject to the approval of the chair.

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

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

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

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

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

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

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

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

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

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

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

(b) The council may not:

(1) adopt rules;

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

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

(4) grant or lend money for the construction of water resource projects;

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

(6) consider or discuss a specific permit or project or recommendation for a project until the water permit has been issued by the state and all motions for rehearing have been overruled.

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

Sec. 9.010. ANALYSIS OF AUTHORITIES. (a) On a five-year cycle, each authority shall provide the council with the information required by Sections 9.011 and 9.012. The information shall be provided to the council in the order of groups described in Subsection (b), with the information submitted by group 1 by the council's first quarterly meeting of the five-year period and group 2 submitted by the council's third quarterly meeting of the period. The council shall continue in numerical order to receive the information by each group at every other quarterly meeting until all 10 groups have been completed and then shall recommence the cycle.

(b) Authorities shall provide the information under Subsection (a) in the following groups:

(1) in group 1, Northeast Texas Municipal Water District;

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

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

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

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

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

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

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

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

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

(c) The council may not require an authority under this section to submit the information required under Section 9.012 more than once every five years. The council may, however, request an authority that has submitted information to provide follow-up information on any specific item or issue raised during the initial council analysis.

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

Sec. 9.011. PERFORMANCE STANDARDS. (a) Before its five-year analysis under Section 9.010, an authority shall report to the council a self-assessment of:

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

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

(3) how the authority is addressing issues raised by its most recent management audit, if the audit is required by commission rule to be performed, including its administrative policies; and

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

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

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

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

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

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

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

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

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

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

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

Sec. 9.017. DISSOLUTION OF COUNCIL AND ACCOUNT. Unless extended by the 78th Texas Legislature, this chapter and the interagency water advisory account expire on September 1, 2003.

## ARTICLE 2. SURFACE WATER AND GROUNDWATER

### CONJUNCTIVE MANAGEMENT; REGULATORY INCENTIVES

SECTION 2.01. Section 11.002, Water Code, is amended by adding Subdivisions (11), (12), (13), and (14) to read as follows:

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

(12) "Agriculture" means any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in a governmental program or normal crop or livestock rotation procedure; and

(E) raising or keeping equine animals.

(13) "Agricultural use" means any use or activity involving agriculture, including irrigation.

(14) "Nursery grower" means a person who grows more than 50 percent of the products that the person sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, "grow" means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

SECTION 2.02. Section 11.023(a), Water Code, is amended to read as follows:

(a) State water may be appropriated, stored, or diverted for:

(1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;

(2) agricultural uses and industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;

(3) [~~irrigation~~;

~~(4)]~~ mining and recovery of minerals;

(4) ~~(5)]~~ hydroelectric power;

(5) ~~(6)]~~ navigation;

(6) ~~(7)]~~ recreation and pleasure;

(7) ~~(8)]~~ stock raising;

~~(9)]~~ public parks; and

(8) ~~(10)]~~ game preserves.

SECTION 2.03. Section 11.024, Water Code, is amended to read as follows:

Sec. 11.024. APPROPRIATION: PREFERENCES. In order to conserve and properly utilize state water, the public welfare requires not only recognition of beneficial uses but also a constructive public policy regarding the preferences between these uses, and it is therefore declared to be the public policy of this state that in appropriating state water preference shall be given to the following uses in the order named:

(1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals, it being the public policy of the state and for the benefit of the greatest number of people that in the appropriation of water as herein defined, the appropriation of water for domestic and municipal uses shall be and remain superior to the rights of the state to appropriate the same for all other purposes;

(2) agricultural uses and industrial uses, which means [~~meaning~~] processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;

(3) [~~irrigation~~;

~~(4)]~~ mining and recovery of minerals;

(4) ~~(5)]~~ hydroelectric power;

(5) ~~(6)]~~ navigation;

(6) ~~(7)]~~ recreation and pleasure; and

(7) ~~(8)]~~ other beneficial uses.

SECTION 2.04. Section 11.038, Water Code, is amended to read as follows:

Sec. 11.038. RIGHTS OF OWNERS OF LAND ADJOINING CANAL, ETC.

(a) A person who owns or holds a possessory interest in land adjoining or contiguous to a canal, ditch, flume, lateral, dam, reservoir, or lake constructed and maintained under the provisions of this chapter and who has secured a right to the use of water in the canal, ditch, flume, lateral, dam, reservoir, or lake is entitled to be supplied from the canal, ditch, flume, lateral, dam, reservoir, or lake with water [~~for irrigation of the land and~~] for agricultural uses, mining, milling, manufacturing, development of power, and stock raising, in accordance with the terms of the person's [~~his~~] contract.

(b) If the person, association of persons, or corporation owning or controlling the water and the person who owns or holds a possessory interest in the adjoining land

cannot agree on a price for a permanent water right or for the use of enough water for irrigation of the person's land or for agricultural uses, mining, milling, manufacturing, development of power, or stock raising, then the party owning or controlling the water, if the person [~~he~~] has any water not contracted to others, shall furnish the water necessary for these purposes at reasonable and nondiscriminatory prices.

SECTION 2.05. Section 11.085(p), Water Code, is amended to read as follows:

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

SECTION 2.06. Section 11.088, Water Code, is amended to read as follows:

Sec. 11.088. DESTRUCTION OF WATERWORKS. No person may wilfully cut, dig, break down, destroy, or injure or open a gate, bank, embankment, or side of any ditch, canal, reservoir, flume, tunnel or feeder, pump or machinery, building, structure, or other work which is the property of another, or in which another owns an interest, or which is lawfully possessed or being used by another, and which is used for [~~irrigation,~~] milling, mining, manufacturing, the development of power, domestic purposes, agricultural uses, or stock raising, with intent to:

(1) maliciously injure a person, association, corporation, water improvement or irrigation district;

(2) gain advantage for himself; or

(3) take or steal water or cause water to run out or waste out of the ditch, canal, or reservoir, feeder, or flume for his own advantage or to the injury of a person lawfully entitled to the use of the water or the use or management of the ditch, canal, tunnel, reservoir, feeder, flume, machine, structure, or other irrigation work.

SECTION 2.07. Section 11.122(a), Water Code, is amended to read as follows:

(a) All holders of permits, certified filings, and certificates of adjudication issued under Section 11.323 of this code shall obtain from the commission authority to change the place of use, purpose of use, point of diversion, rate of diversion, acreage to be irrigated, or otherwise alter a water right. Without obtaining an amendment, the holder of a permit, certified filing, or certificate of adjudication that includes industrial or irrigation use may use or supply water for an agricultural use that was classified as industrial or irrigation before September 1, 2001.

SECTION 2.08. Section 11.134(b), Water Code, is amended to read as follows:

(b) The commission shall grant the application only if:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fee;

(2) unappropriated water is available in the source of supply;

(3) the proposed appropriation:

(A) is intended for a beneficial use;

(B) does not impair existing water rights or vested riparian rights;

(C) is not detrimental to the public welfare;

(D) considers the assessments performed under Sections 11.147(d) and (e) and Sections 11.150, 11.151, and 11.152 [effects of any hydrological connection between surface water and groundwater]; and

(E) addresses a water supply need in a manner that is consistent with the state water plan and the relevant [~~an approved~~] regional water plan for any area in which the proposed appropriation is located, unless the commission determines that conditions warrant waiver of this requirement; and

(4) the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by Subdivision (8)(B), Section 11.002~~[, of this code]~~.

SECTION 2.09. Section 11.142, Water Code, is amended to read as follows:

Sec. 11.142. PERMIT EXEMPTIONS. (a) Without obtaining a permit, a person may construct on the person's [his] own property a dam or reservoir with normal storage of not more than 200 acre-feet of water for domestic and livestock purposes.

(b) Without obtaining a permit, a person may construct on the person's property a dam or reservoir with normal storage of not more than 100 acre-feet of water for commercial and noncommercial fish and wildlife purposes, other than aquaculture, if the property on which the dam or reservoir will be constructed is qualified open-space land, as defined by Section 23.51, Tax Code, on the basis of its use for wildlife management. In this subsection, "aquaculture" has the meaning assigned by Section 134.001, Agriculture Code.

(c) Without obtaining a permit, a person who is drilling and producing petroleum and conducting operations associated with drilling and producing petroleum may take for those purposes state water from the Gulf of Mexico and adjacent bays and arms of the Gulf of Mexico in an amount not to exceed one acre-foot during each 24-hour period.

(d) ~~(e)~~ Without obtaining a permit, a person may construct or maintain a reservoir for the sole purpose of sediment control as part of a surface coal mining operation under the Texas Surface Coal Mining and Reclamation Act (Chapter 134, Natural Resources Code [Article 5920-11, Vernon's Texas Civil Statutes]).

SECTION 2.10. Section 11.146, Water Code, is amended by adding Subsection (g) to read as follows:

(g) This section does not apply to a permit for construction of a reservoir designed for the storage of more than 50,000 acre-feet of water.

SECTION 2.11. Section 11.147(b), Water Code, is amended to read as follows:

(b) In its consideration of an application for a permit to store, take, or divert water, the commission shall assess the effects, if any, of the issuance of the permit on the bays and estuaries of Texas. For permits issued within an area that is 200 river miles of the coast, to commence from the mouth of the river thence inland, the commission shall include in the permit, to the extent practicable when considering all public interests and the studies mandated by Section 16.058 as evaluated under Section 11.1491, those conditions considered necessary to maintain beneficial inflows to any affected bay and estuary system.

SECTION 2.12. Section 11.173(b), Water Code, is amended to read as follows:

(b) A permit, certified filing, or certificate of adjudication or a portion of a permit, certified filing, or certificate of adjudication is exempt from cancellation under Subsection (a) ~~[of this section]~~:

(1) to the extent of the owner's participation in the Conservation Reserve Program authorized by the Food Security Act, Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514 (1985) or a similar governmental program; ~~[or]~~

(2) if a significant [any] portion of the water authorized to be used pursuant to a permit, certified filing, or certificate of adjudication has been used in accordance with a specific recommendation for meeting a water need included in the regional water plan approved pursuant to Section 16.053;

(3) if the permit, certified filing, or certificate of adjudication:

(A) was obtained to meet demonstrated long-term public water supply or electric generation needs as evidenced by a water management plan developed by the holder; and

(B) is consistent with projections of future water needs contained in the state water plan; or

(4) if the permit, certified filing, or certificate of adjudication was obtained as the result of the construction of a reservoir funded, in whole or in part, by the holder of the permit, certified filing, or certificate of adjudication as part of the holder's long-term water planning [of this code].

SECTION 2.13. Section 11.177(b), Water Code, is amended to read as follows:

(b) In determining what constitutes reasonable diligence or a justified nonuse as used in Subsection (a)(2) ~~[of this section]~~, the commission shall give consideration to:

(1) whether sufficient water is available in the source of supply to meet all or part of the appropriation during the 10-year period of nonuse;

(2) whether the nonuse is justified by the holder's participation in the federal Conservation Reserve Program or a similar governmental program as provided by Section 11.173(b)(1) ~~[of this code]~~;

~~(3) [whether the permit, certified filing, or certificate of adjudication was obtained to meet demonstrated long-term public water supply or electric generation needs as evidenced by a water management plan developed by the holder and consistent with projections of future water needs contained in the state water plan;~~

~~[(4) whether the permit, certified filing, or certificate of adjudication was obtained as the result of the construction of a reservoir funded, in whole or in part, by the holder of the permit, certified filing, or certificate of adjudication as part of the holder's long-term water planning;~~

~~[(5) whether the existing or proposed authorized purpose and place of use are consistent with an approved regional water plan as provided by Section 16.053 [of this code];~~

~~(4) [(6) whether the permit, certified filing, or certificate of adjudication has been deposited into the Texas Water Bank as provided by Sections 15.7031 and 15.704 [of this code] or whether it can be shown that the water right or water available under the right is currently being made available for purchase through private marketing efforts; or~~

~~(5) [(7) whether the permit, certified filing, or certificate of adjudication has been reserved to provide for instream flows or bay and estuary inflows.~~

SECTION 2.14. Section 15.701(2), Water Code, is amended to read as follows:

(2) "Depositor" means a person who deposits or has on deposit a water right in the water bank or trust.

SECTION 2.15. Section 16.012, Water Code, is amended by adding Subsections (l) and (m) to read as follows:

(l) The executive administrator shall obtain or develop groundwater availability models for major and minor aquifers in coordination with groundwater conservation districts and regional water planning groups created under Section 16.053 that overlie the aquifers. Modeling of major aquifers shall be completed not later than October 1, 2004. On completing a groundwater availability model for an aquifer, the executive administrator shall provide the model to each groundwater conservation district and each regional water planning group created under Section 16.053 overlying that aquifer.

(m) The executive administrator may conduct surveys of entities using groundwater and surface water at intervals determined appropriate by the executive administrator to gather data to be used for long-term water supply planning. Recipients of the survey shall complete and return the survey to the executive administrator. A person who fails to timely complete and return the survey is not eligible for funding from the board for board programs and is ineligible to obtain permits, permit amendments, or permit renewals from the commission under Chapter 11. A person who fails to complete and return the survey commits an offense that is punishable as a Class C misdemeanor. Surveys obtained by the board from nongovernmental entities are excepted from the requirements of Section 552.021, Government Code, unless otherwise directed in writing by the person completing the survey. This subsection does not apply to survey information regarding windmills used for domestic and livestock use.

SECTION 2.16. Sections 16.051(a), (d), (f), (g), and (h), Water Code, are amended to read as follows:

(a) ~~Not [No]~~ later than January 5, 2002, and ~~before the end of each successive five-year period after that date [every five years thereafter]~~, the board shall adopt a comprehensive state water plan that incorporates the regional water plans approved under Section 16.053. The state water plan shall provide for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions, in order that sufficient water will be available at a reasonable cost to ensure public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of the entire state.

(d) The board, in coordination with the commission, the Department of Agriculture, and the Parks and Wildlife Department, shall adopt by rule guidance principles for the state water plan which reflect the public interest of the entire state. When adopting guidance principles, due consideration shall be given to the protection of agriculture and the natural resources of the state, the construction and improvement of surface water resources, and the application of principles that result in voluntary redistribution of water resources. The board shall review and update the guidance principles, with input from the commission, the Department of Agriculture, and the Parks and Wildlife Department, as necessary but at least every five years to coincide with the five-year cycle for adoption of a new water plan as described in Subsection (a).

(f) The legislature may designate a[:

~~[(+)]~~ river or stream segment of unique ecological value. This designation solely means that a state agency or political subdivision of the state may not finance the actual construction of a reservoir in a specific river or stream segment designated by the legislature under this subsection.

(g) ~~The legislature may designate a[; or~~

~~[(2)]~~ site of unique value for the construction of a reservoir.

~~[(g)]~~ A state agency or political subdivision of the state may not obtain a fee title or an easement that would[:

~~[(1)]~~ destroy the unique ecological value of a river or stream segment designated by the legislature under Subsection (f) of this section; or

~~[(2)]~~ significantly prevent the construction of a reservoir on a site designated by the legislature under ~~[Subsection (f) of]~~ this subsection [section].

(h) The board, the commission, or the Parks and Wildlife Department or a political subdivision affected by an action taken in violation of Subsection ~~(f) or~~ (g) ~~of~~

~~this section~~] may bring a cause of action to remedy or prevent the violation. A cause of action brought under this subsection must be filed in a district court in Travis County or in the county in which the action is proposed or occurring.

SECTION 2.17. Sections 16.053(d) and (e), Water Code, are amended to read as follows:

(d) The board shall provide guidelines for the consideration of existing regional planning efforts by regional water planning groups. The board shall provide guidelines for the format in which information shall be presented in the regional water plans. The board by rule shall require a holder of a surface water permit, a certified filing, or a certificate of adjudication for surface water, a holder of a permit for the export of groundwater from a groundwater conservation district, a retail public water supplier, a wholesale water provider, an irrigation district, and any other person who is transporting groundwater or surface water 20 miles or more to report to the board information on certain water pipelines and other facilities that can be used for water conveyance. Nothing in the initial planning effort shall prevent development of a management plan or project where local or regional needs require action prior to completion of the initial regional water plan under this section.

(e) Each regional water planning group shall submit to the board a regional water plan that:

(1) is consistent with the guidance principles for the state water plan adopted by the board under Section 16.051(d);

(2) provides information based on data provided or approved by the board in a format consistent with the guidelines provided by the board under Subsection (d);

(3) identifies:

(A) each source of water supply in the regional water planning area in accordance with the guidelines provided by the board under Subsections (d) and (f);

(B) factors specific to each source of water supply to be considered in determining whether to initiate a drought response; ~~and~~

(C) actions to be taken as part of the response; and

(D) information on water pipelines and other facilities that can be used for water conveyance, including, but not limited to, currently used and abandoned oil, gas, and water pipelines, as provided by board rules and guidelines;

(4) has specific provisions for water management strategies to be used during a drought of record;

(5) includes but is not limited to consideration of the following:

(A) any existing water or drought planning efforts addressing all or a portion of the region;

(B) certified groundwater conservation district management plans and other plans submitted under Section 16.054;

(C) all potentially feasible water management strategies, including but not limited to improved conservation, reuse, and management of existing water supplies, acquisition of available existing water supplies, and development of new water supplies;

(D) protection of existing water rights in the region;

(E) opportunities for and the benefits of developing regional water supply facilities or providing regional management of water supply facilities;

(F) appropriate provision for environmental water needs and for the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and the effect of plans on navigation;

(G) provisions in Section 11.085(k)(1) if interbasin transfers are contemplated;

(H) voluntary transfer of water within the region using, but not limited to, regional water banks, sales, leases, options, subordination agreements, and financing agreements; and

(I) emergency transfer of water under Section 11.139, including information on the part of each permit, certified filing, or certificate of adjudication for nonmunicipal use in the region that may be transferred without causing unreasonable damage to the property of the nonmunicipal water rights holder; ~~and~~

(6) identifies river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the regional water planning group recommends for protection under Section 16.051;

(7) assesses the impact of the plan on unique river and stream segments identified in Subdivision (6) if the regional water planning group determines that a site of unique ecological value exists; and

(8) describes the impact of proposed water projects on water quality.

SECTION 2.18. Section 16.053(h)(7), Water Code, is amended to read as follows:

(7) The board may approve a regional water plan only after it has determined that:

(A) [that] all interregional conflicts involving that regional water planning area have been resolved;

(B) the plan includes water conservation practices and drought management measures incorporating, at a minimum, the provisions of Sections 11.1271 and 11.1272; and

(C) the plan is consistent with long-term protection of the state's water resources, agricultural resources, and natural resources as embodied in the guidance principles adopted under Section 16.051(d).

SECTION 2.19. Section 16.053, Water Code, is amended by amending Subsection (j) and adding Subsections (p) and (q) to read as follows:

(j) The board may provide financial assistance to political subdivisions under Subchapters E and F of this chapter, Subchapters C, D, E, F, ~~and~~ J, O, and P, Chapter 15, and Subchapters D, I, K, and L, Chapter 17, for water supply projects only if:

(1) the board determines that the needs to be addressed by the project will be addressed in a manner that is consistent with the state water plan; and

(2) beginning January 5, 2002, the board:

(A) has approved a regional water plan as provided by Subsection (i), and any required updates of the plan, for the region of the state that includes the area benefiting from the proposed project; and

(B) determines that the needs to be addressed by the project will be addressed in a manner that is consistent with that regional water plan.

(p) If a groundwater conservation district files a petition with the board stating that a conflict requiring resolution may exist between the district's certified groundwater conservation district management plan developed under Section 36.1071 and the approved regional water plan, the board shall facilitate coordination between the district and the involved region to resolve the conflict. If conflict remains, the board shall resolve the conflict. If the board determines that resolution of conflict

requires a revision of an approved regional water plan, the board shall suspend the approval of that plan and provide information to the regional water planning group. The regional water planning group shall prepare any revisions to its plan specified by the board and shall hold, after notice, at least one public hearing at some central location within the regional water planning area. The regional water planning group shall consider all public and board comments, prepare, revise, and adopt its plan, and submit the revised plan to the board for approval and inclusion in the state water plan. If the board determines that resolution of conflict requires a revision of the district's certified groundwater conservation district management plan, the board shall suspend the certification of that plan and provide information to the district. The groundwater district shall prepare any revisions to its plan specified by the board and shall hold, after notice, at least one public hearing at some central location within the district. The groundwater district shall consider all public and board comments, prepare, revise, and adopt its plan, and submit the revised plan to the board for certification. On the request of the involved region or groundwater conservation district, the board shall include discussion of the conflict and its resolution in the state water plan that the board provides to the governor, the lieutenant governor, and the speaker of the house of representatives under Section 16.051(e).

(q) Each regional planning group shall examine the financing needed to implement the water management strategies and projects identified in the group's most recent approved regional plan and, not later than June 1, 2002, shall report to the board regarding:

(1) how local governments, regional authorities, and other political subdivisions in the region propose to pay for water infrastructure projects identified in the plan; and

(2) what role the regional planning group proposes for the state in financing projects identified in the plan, giving particular attention to proposed increases in the level of state participation in funding for regional projects to meet needs beyond the reasonable financing capability of local governments, regional authorities, and other political subdivisions involved in building water infrastructure.

SECTION 2.20. Sections 16.054(a), (c), and (d), Water Code, are amended to read as follows:

(a) Notwithstanding the provisions of this subsection, groundwater districts are the state's preferred method of managing groundwater resources. It is the policy of the state that water resource management, water conservation, and drought planning should occur on an ongoing basis. The board, commission, and Parks and Wildlife Department shall make available where appropriate technical and financial assistance for such planning. In addition, the Department of Agriculture may provide input and assistance, as appropriate, for local water [such] planning.

(c) When preparing a plan to be submitted under this section, a person shall consider the implementation of a desalination program if practicable.

(d) The regional water planning group shall consider any plan submitted under this section when preparing the regional water plan under Section 16.053 of this code. A political subdivision, including a groundwater conservation district, in the regional water planning area may request a regional water planning group to consider specific changes to a regional water plan based on changed conditions or new information. The regional water planning group shall consider the request and shall amend its regional water plan if it determines that an amendment is warranted. If the entity requesting the

change is dissatisfied with the decision of the regional planning group, the entity may request that the board review the decision and consider changing the state-approved regional plan.

(e) After January 5, 2002, when ~~[(d) When]~~ preparing individual water plans that address drought or the development, management, or conservation of water resources from the holders of existing permits, certified filings, or certificates of adjudication, the water suppliers, ~~[groundwater districts,]~~ special districts, irrigation districts, and other water users should ensure that the plan is not in conflict with the applicable approved regional water plan for their region.

SECTION 2.21. Section 35.002(11), Water Code, is amended to read as follows:

(11) "Management area" means an area designated and delineated by the Texas Water Development Board ~~[commission]~~ as an area suitable for management of groundwater resources.

SECTION 2.22. Section 35.004, Water Code, is amended to read as follows:

Sec. 35.004. DESIGNATION OF GROUNDWATER MANAGEMENT AREAS.

(a) The Texas Water Development Board, with assistance and cooperation from the commission, shall designate groundwater management areas covering all major and minor aquifers in the state. The initial designation of groundwater management areas shall be completed not later than September 1, 2003 ~~[On its own motion from time to time, or on receiving a petition, the commission may designate groundwater management areas]~~. Each groundwater management area shall be designated with the objective of providing the most suitable area for the management of the groundwater resources. To the extent feasible, the groundwater management area shall coincide with the boundaries of a groundwater reservoir or a subdivision of a groundwater reservoir. The Texas Water Development Board ~~[commission]~~ also may consider other factors, including the boundaries of political subdivisions.

(b) The commission may designate a groundwater management area after September 1, 2001, for a petition filed and accepted by the commission according to its rules in effect before September 1, 2001. The commission shall act on the designation in accordance with this section ~~[On the request of any person interested in the petition, or on the request of the commission, the executive director shall prepare available evidence relating to the configuration of a groundwater management area. Before making the designation, the commission shall consider the evidence prepared by the executive director and other evidence submitted at the hearing].~~

(c) The Texas Water Development Board ~~[commission]~~ may alter the boundaries of designated management areas as required by future conditions and as justified by factual data. An alteration of boundaries does not invalidate the previous creation of any district.

(d) The Texas Water Development Board ~~[commission]~~ shall designate groundwater management areas using the procedures applicable to rulemaking under ~~[the Administrative Procedure Act, Subchapter B,]~~ Chapter 2001, Government Code.

SECTION 2.23. Sections 35.007(a) and (f), Water Code, are amended to read as follows:

(a) The executive director and the executive administrator shall meet periodically ~~[at least once a year]~~ to identify, based on information gathered by the commission and the Texas Water Development Board, those areas of the state that are experiencing or that are expected to experience, within the immediately following 25-year period, critical groundwater problems, including shortages of surface water or groundwater,

land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies. Not later than September 1, 2005, the commission, with assistance and cooperation from the Texas Water Development Board, shall complete the initial designation of priority groundwater management areas across all major and minor aquifers of the state for all areas that meet the criteria for that designation. The studies may be prioritized considering information from the regional planning process, information from the Texas Water Development Board groundwater management areas and from groundwater conservation districts, and any other information available. After the initial designation of priority groundwater management areas, the commission and the Texas Water Development Board shall annually review the need for additional designations as provided by this subsection.

(f) The report shall include:

(1) the recommended delineation of the boundaries of any proposed priority groundwater management area in the form of an order to be considered for adoption by the commission;

(2) the reasons and supporting information for or against designating the area as a priority groundwater management area;

(3) a recommendation regarding whether one or more districts [~~a district~~] should be created in the priority groundwater management area, ~~or~~ whether the priority groundwater management area should be added to an existing district, or whether a combination of those actions should be taken;

(4) a recommendation as to actions that should be considered to conserve natural resources;

(5) an evaluation of information or studies submitted to the executive director under Subsection (c); and

(6) any other information that the executive director considers helpful to the commission.

SECTION 2.24. Section 35.008, Water Code, is amended to read as follows:

Sec. 35.008. PROCEDURES FOR DESIGNATION OF PRIORITY GROUNDWATER MANAGEMENT AREA; CONSIDERATION OF CREATION OF NEW DISTRICT OR ADDITION OF LAND IN PRIORITY GROUNDWATER MANAGEMENT AREA TO EXISTING DISTRICT; COMMISSION ORDER.

(a) The commission shall designate priority groundwater management areas using the procedures provided by this chapter in lieu of those provided by Subchapter B, Chapter 2001, Government Code.

(b) The commission shall call an evidentiary hearing to consider:

(1) the designation of a priority groundwater management area; and

(2) whether one or more districts [~~a district~~] should be created over all or part of a priority groundwater management area, ~~or~~

~~[(3)]~~ whether all or part of the land in the priority groundwater management area should be added to an existing district, or whether a combination of those actions should be taken.

(c) Evidentiary hearings shall be held at a location in one of the counties in which the priority groundwater management area is located, or proposed to be located, or in the nearest convenient location if adequate facilities are not available in those counties.

(d) At the hearing, the commission shall hear testimony and receive evidence from affected persons. Affected persons include landowners and well owners in the proposed priority groundwater management area. The commission shall consider the

executive director's report and supporting information and the testimony and evidence received at the hearing. If the commission considers further information necessary, the commission may request such information from any source.

(e) An evidentiary hearing shall be concluded not later than the 75th day after the date notice of the hearing is published.

(f) At the conclusion of the hearing and the commission's considerations, the commission shall issue an order stating its findings and conclusions, including whether a priority groundwater management area should be designated in the area and recommendations regarding district creation required by Subsection (g).

(g) The commission's order designating a priority groundwater management area must recommend that the area be covered by a district in one of the following ways, according to which action is most feasible and practicable:

(1) creation of one or more new districts;

(2) addition of the land in the priority groundwater management area to one or more existing districts; or

(3) a combination of actions under Subdivisions (1) and (2).

(h) In recommending the boundaries of a district or districts under Subsection (g), the commission shall give preference to boundaries that are coterminous with those of the priority groundwater management area, but may recommend district boundaries along existing political subdivision boundaries at the discretion of the commission to facilitate district creation and confirmation.

(i) [(e)] The designation of a priority groundwater management area may not be appealed nor may it be challenged under Section 5.351 of this code or [the Administrative Procedure Act,] Section 2001.038, Government Code.

SECTION 2.25. Sections 35.009(a) and (b), Water Code, are amended to read as follows:

(a) The commission shall have notice of the hearing published in at least one newspaper with general circulation in the county or counties in which the area proposed for designation as a priority groundwater management area [~~or the area within a priority groundwater management area being considered for district creation or for addition to an existing district~~] is located. Notice must be published not later than the 30th day before the date set for the hearing [~~commission to consider the designation of the priority groundwater management area, the creation of a district in a priority groundwater management area, or the addition of land in a priority groundwater management area to an existing district~~].

(b) The notice must include:

(1) if applicable, a statement of the general purpose and effect of designating the proposed priority groundwater management area;

(2) if applicable, a statement of the general purpose and effect of creating a new district in the priority groundwater management area;

(3) if applicable, a statement of the general purpose and effect of adding all or part of the land in the priority groundwater management area to an existing district;

(4) a map generally outlining the boundaries of the area being considered for priority groundwater management area designation [~~or the priority groundwater management area being considered for district creation or for addition to an existing district,~~] or notice of the location at which a copy of the map may be examined or obtained;

(5) a statement that the executive director's report concerning the priority groundwater management area or proposed area is available at the commission's main

office in Austin, Texas, and at regional offices of the commission for regions which include territory within the priority groundwater management area or proposed priority groundwater management area and that the report is available for inspection during regular business hours;

(6) a description or the name of the locations in the affected area at which the commission has provided copies of the executive director's report to be made available for public inspection;

(7) the name and address of each public library, each county clerk's office, and each district to which the commission has provided copies of the executive director's report; and

(8) the date, time, and place of the hearing.

SECTION 2.26. Section 35.012, Water Code, is amended to read as follows:

Sec. 35.012. CREATION OF DISTRICT IN PRIORITY GROUNDWATER MANAGEMENT AREA [COMMISSIONER ORDER]. (a) [At the conclusion of its hearing and considerations, the commission shall issue an order stating its findings and conclusions:

~~[(b) If the commission finds that the land and other property in the priority groundwater management area would benefit from the creation of one or more districts, that there is a public need for one or more districts, and that the creation of one or more districts would further the public welfare, the commission shall issue an order stating that the creation of one or more districts is needed:~~

~~[(c)] Following the issuance of a commission order under Section 35.008 designating a priority groundwater management area and recommending the creation of one or more districts, or the addition of land to an existing district [Subsection (b)], the landowners in the priority groundwater management area may:~~

- ~~(1) create one or more districts under Subchapter B, Chapter 36;~~
- ~~(2) have the area annexed to a district that adjoins the area; or~~
- ~~(3) create one or more districts through the legislative process.~~

~~(b) Within two years, but not sooner than the 120th day after the date on which the commission issues an order under Section 35.008 designating a priority groundwater management area, for those areas that are not within a district the commission shall:~~

- ~~(1) create one or more new districts under Section 36.0151;~~
- ~~(2) recommend that the areas, or a portion of the areas, be added to an existing district under Section 35.013; or~~
- ~~(3) take any combination of the actions under Subdivisions (1) and (2).~~

~~(c) Following the issuance of a commission order under Section 35.008 [(d)] The commission shall identify the areas subject to the order of the commission issued under Subsection (b) that have not been incorporated into a district and shall delineate proposed boundaries of a district to include those areas. If the commission proposes the creation of one or more districts], the Texas Agricultural Extension Service shall begin an educational program within such areas with the assistance and cooperation of the Texas Water Development Board, the commission, the Department of Agriculture, other state agencies, and existing districts to inform the residents of the status of the area's water resources and management options including possible formation of a district[~~, before beginning the procedures for creation of a district provided in Subchapter B, Chapter 36]. The county commissioners court of each county in the priority groundwater management area shall form a steering committee to provide assistance to the Texas Agricultural Extension Service in accomplishing the goals of the education program within the area.~~~~

~~[(e) If the commission fails to find that the district would be a benefit to the land and other property within the priority groundwater management area, that there is a public need for the district, or that creation of the district will further the public welfare, the commission shall issue an order stating that a district should not be created within the boundaries of the priority groundwater management area.~~

~~[(f) An order of the commission issued under this section may not be appealed.]~~

SECTION 2.27. Section 35.013, Water Code, is amended to read as follows:

Sec. 35.013. ADDING PRIORITY GROUNDWATER MANAGEMENT AREA TO EXISTING DISTRICT. (a) ~~[If land in a priority groundwater management area is located adjacent to one or more existing districts, the commission, instead of issuing an order under Section 35.012, may issue an order recommending that the priority groundwater management area be added to the existing district designated by the commission. In its order, the commission must find that the land and other property in the priority groundwater management area and the land in the existing district will benefit from the addition of the area, that there is a public need to add the priority groundwater management area to the existing district, and that the addition of the land to the existing district would further the public welfare.~~

~~[(b) If the commission in its order under Section 35.008 [executive director] recommends that the priority groundwater management area or a portion of the priority groundwater management area be added to an existing district [or if the commission considers it possible to add the priority groundwater management area to an adjacent existing district], the commission shall give notice to the board of the existing district recommended in its order [by the executive director or considered by the commission to possibly serve the area] and to any other existing districts adjacent to the priority groundwater management area.~~

~~(b) [(e)]~~ The commission shall submit a copy of the order to the board of the district to which it is recommending the priority groundwater management area be added. The board shall vote on the addition of the priority groundwater management area to the district and shall advise the commission of the outcome.

~~(c) [(d)]~~ If the board votes to accept the addition of the priority groundwater management area to the district, the board:

(1) may request the Texas Agricultural Extension Service, the commission, and the Texas Water Development Board, with the cooperation and assistance of the Department of Agriculture and other state agencies, to administer an educational program to inform the residents of the status of the area's water resources and management options including possible annexation into a district;

(2) shall call an election within the priority groundwater management area, or portion of the priority groundwater management area, as delineated by the commission to determine if the priority groundwater management area will be added to the district; and

(3) shall designate election precincts and polling places for the elections in the order calling an election under this subsection.

~~(d) [(e)]~~ The board shall give notice of the election and the proposition to be voted on. The board shall publish notice of the election at least one time in one or more newspapers with general circulation within the boundaries of the priority groundwater management area. The notice must be published before the 30th day preceding the date set for the election.

~~(e) [(f)]~~ The ballots for the election shall be printed to provide for voting for or against the proposition: "The inclusion of \_\_\_\_\_ (briefly

describe priority groundwater management area) in the \_\_\_\_\_ District." If the district has outstanding debts or taxes, the proposition shall include the following language: "and assumption by the described area of a proportional share of the debts or taxes of the district."

(f) [~~(g)~~] Immediately after the election, the presiding judge of each polling place shall deliver the returns of the election to the board, and the board shall canvass the returns for the election within the priority groundwater management area and declare the results. If a majority of the voters in the priority groundwater management area voting on the proposition vote in favor of the proposition, the board shall declare that the priority groundwater management area is added to the district. If a majority of the voters in the priority groundwater management area voting on the proposition vote against adding the priority groundwater management area to the district, the board shall declare that the priority groundwater management area is not added to the district. The board shall file a copy of the election results with the commission.

(g) [~~(h)~~] If the voters approve adding the priority groundwater management area to the district, the board of the district to which the priority groundwater management area is added shall provide reasonable representation on that board compatible with the district's existing scheme of representation. Not later than the 30th day after the date on which the board declares that the priority groundwater management area is added to the district, the board of the existing district shall appoint a person or persons to represent the area until the next regularly scheduled election or appointment of directors.

(h) [~~(i)~~] If the proposition is defeated, or if the board of the existing district votes not to accept the addition of the area to the district, then the commission shall, except as provided under Subsection (i), create under Section 36.0151 one or more districts covering the priority groundwater management area not later than the first anniversary of the date on which the proposition is defeated or the board votes not to accept the area.

(i) For an area that is not feasible for the creation of one or more districts as determined in the commission's findings under Section 35.008, the commission shall include in its report under Section 35.018 recommendations for the future management of the priority groundwater management area.

(j) Another [another] election to add the priority groundwater management area to an existing district may not be called before the first anniversary of the date on which the election on the proposition was held.

SECTION 2.28. Section 35.018(c), Water Code, is amended to read as follows:

(c) If the commission determines that a district created under Chapter 36 is not appropriate for, or capable of, the protection of the groundwater resources for a particular management area or priority groundwater management area, the commission may recommend in its report to the legislature the creation of a special district or amendment of an existing district. [~~(1) If voters fail to create a groundwater district in a priority groundwater management area or if voters fail to add the priority groundwater management area to an existing groundwater district, the report shall include recommendations for the future management of the priority groundwater management area. The recommendations may include but are not limited to the following:~~

[(A) creation of a groundwater district by the legislature;

[(B) annexation of a priority groundwater management area into an existing district by the legislature; or

~~[(C) management of the priority groundwater management area by the nearest regional office of the commission. The commission may be authorized to:~~

~~[(i) adopt spacing and annual per acre pumping restrictions;~~

~~[(ii) issue well permits in accordance with Sections 36.113 and 36.1131;~~

~~[(iii) prevent waste and protect the quality of groundwater in accordance with Sections 36.001(8)(A)-(G);~~

~~[(iv) levy administrative penalties for violations; and~~

~~[(v) collect fees in accordance with Sections 36.206(a) and (b).]~~

~~[(2) If the commission is required by the legislature to manage the priority groundwater management area, a new election may not be called for three years from the date of the last election.]~~

SECTION 2.29. Section 36.001, Water Code, is amended by amending Subdivision (13) and adding Subdivisions (18) through (22) to read as follows:

(13) "Management area" means an area designated and delineated by the Texas Water Development Board [commission] under Chapter 35 as an area suitable for management of groundwater resources.

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

(19) "Agriculture" means any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;

(E) wildlife management; and

(F) raising or keeping equine animals.

(20) "Agricultural use" means any use or activity involving agriculture, including irrigation.

(21) "Conjunctive use" means the combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source.

(22) "Nursery grower" means a person who grows more than 50 percent of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, "grow" means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

SECTION 2.30. Section 36.0015, Water Code, is amended to read as follows:

Sec. 36.0015. PURPOSE. In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of

water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution, groundwater conservation districts may be created as provided by this chapter. Groundwater conservation districts created as provided by this chapter are the state's preferred method of groundwater management through rules developed, adopted, and promulgated by a district in accordance with the provisions of this chapter.

SECTION 2.31. Section 36.002, Water Code, is amended to read as follows:

Sec. 36.002. OWNERSHIP OF GROUNDWATER. The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized, and nothing in this code shall be construed as depriving or divesting the owners or their lessees and assigns of the ownership or rights, except as those rights may be limited or altered by ~~subject to~~ rules promulgated by a district.

SECTION 2.32. Section 36.011(b), Water Code, is amended to read as follows:

(b) The commission has exclusive jurisdiction over the ~~[delineation of management areas and the]~~ creation of districts.

SECTION 2.33. Section 36.012, Water Code, is amended by adding Subsection (f) to read as follows:

(f) This section does not apply to districts created under Section 36.0151.

SECTION 2.34. Section 36.013, Water Code, is amended to read as follows:

Sec. 36.013. PETITION TO CREATE DISTRICT. (a) A petition requesting creation of a district must be filed with the commission ~~[executive director]~~ for review and certification under Section 36.015 ~~[submission to the commission]~~.

(b) The petition filed pursuant to this section must be signed by:

- (1) a majority of the landowners within the proposed district, as indicated by the county tax rolls; or
- (2) if there are more than 50 landowners in the proposed district, at least 50 of those landowners.

(c) The petition must include:

- (1) the name of the proposed district;
- (2) the area and boundaries of the proposed district, including a map generally outlining the boundaries of the proposed district;
- (3) the purpose or purposes of the district;
- (4) a statement of the general nature of any projects proposed to be undertaken by the district, the necessity and feasibility of the work, and the estimated costs of those projects according to the persons filing the projects if the projects are to be funded by the sale of bonds or notes; ~~and~~

(5) the names of at least five individuals qualified to serve as temporary directors; and

(6) financial information, including the projected maintenance tax or production fee rate and a proposed budget of revenues and expenses for the district [any additional terms or conditions that restrict the powers of the district from those provided in this chapter].

~~[(d) If a part of the proposed district is not included within either a management area or a priority groundwater management area, the petition to create a district may also contain a request to create a management area. A request to create a management area must comply with the requirements for a petition in Section 35.005, and may be acted on by the commission separately from the petition to create the district.]~~

SECTION 2.35. Section 36.014, Water Code, is amended to read as follows:

Sec. 36.014. NOTICE AND PUBLIC MEETING [~~HEARING~~] ON DISTRICT CREATION. (a) If a petition is filed under Section 36.013, the commission shall give notice of the [an] application [as required by Section 49.011(a)] and shall [may] conduct a public meeting in a central location within the area of the proposed district [hearing] on the application not later than the 60th day after the date the commission issues notice [if the commission determines that a hearing is necessary under Section 49.011]. The notice must contain the date, time, and location of the public meeting and must be published in one or more newspapers of general circulation in the area of the proposed district.

(b) At the public meeting, the commission shall receive comments from interested persons. [If the petition contains a request to create a management area in all or part of the proposed district, the notice must also be given in accordance with the requirements in Section 35.006 for the designation of management areas.]

SECTION 2.36. Section 36.015, Water Code, is amended to read as follows:

Sec. 36.015. COMMISSION CERTIFICATION AND ORDER. (a) Not later than the 90th day after the date the commission holds a public meeting on a petition under Section 36.014, the commission shall certify the petition if the petition is administratively complete. A petition is administratively complete if it complies with the requirements of Sections 36.013(b) and (c).

(b) The commission may not certify a petition if the commission finds that the boundaries of the proposed district may not allow for effective management of the groundwater resources. The commission shall give preference to boundary lines that are coterminous with those of a groundwater management area but may also consider boundaries along existing political subdivision boundaries if those boundaries would facilitate district creation and confirmation.

(c) If a petition proposes the creation of a district in an area, in whole or in part, that has not been designated as a management area, the commission shall provide notice to the Texas Water Development Board. On the receipt of notice from the commission, the Texas Water Development Board shall initiate the process of designating a management area for the area of the proposed district not included in a management area. The commission may not certify the petition until the Texas Water Development Board has adopted a rule whereby the boundaries of the proposed district are coterminous with or inside the boundaries of a management area.

(d) If the commission does not certify the petition, the commission shall provide to the petitioners, in writing, the reasons for not certifying the petition. The petitioners may resubmit the petition, without paying an additional fee, if the petition is resubmitted within 90 days after the date the commission sends the notice required by this subsection.

(e) If the commission certifies the petition as administratively complete, the commission shall issue an order, notify the petitioners, and appoint temporary directors as provided by Section 36.016.

(f) Refusal by the commission to certify a petition to create a district does not invalidate or affect the designation of any management area. [FINDINGS. (a) If the commission finds that a district is feasible and practicable, that it would be a benefit to the land in the district, and that it would be a public benefit or utility, the commission shall issue an order containing these findings granting the petition.

[(b) If the commission finds that a district is not feasible and practicable, that it would not be a benefit to the land in the district, that it would not be a public benefit or utility, or that it is not needed, the commission by order shall deny the petition.

~~[(c) The commission may adjust the boundaries of the proposed district to exclude any land that would not be benefited by inclusion in the district and is not necessary to the district for proper regulation of the groundwater reservoir.~~

~~[(d) If the commission grants the petition to create the district, it shall direct in its order creating the district that an election be called by the temporary directors to confirm the creation of the district and to elect permanent directors.~~

~~[(e) The refusal to grant a petition to create a district does not invalidate or affect the designation of any management area requested in the same petition.~~

~~[(f) The commission shall act on the petition within a reasonable amount of time.]~~

SECTION 2.37. Section 36.0151(a), Water Code, is amended to read as follows:

(a) If the commission is required to create ~~[proposes that]~~ a district ~~[be created]~~ under Section 35.012(b) ~~[35.012(d)]~~, it shall, without an evidentiary hearing, issue an order creating the district and shall provide in its order ~~[creating the district provide]~~ that temporary directors be appointed under Section 36.016 and that an election be called by the temporary directors to authorize the district to assess taxes ~~[confirm the creation of the district]~~ and to elect permanent directors.

SECTION 2.38. Section 36.016(a), Water Code, is amended to read as follows:

(a) If the commission certifies ~~[grants]~~ a petition to create a district under Section 36.015, the commission shall appoint the temporary directors named in the petition. ~~If [or after]~~ the commission dissolves a district's board under Section 36.303, it shall appoint five temporary directors.

SECTION 2.39. Section 36.017, Water Code, is amended by amending the section heading and Subsections (a), (d), and (g) and adding Subsection (i) to read as follows:

Sec. 36.017. CONFIRMATION AND DIRECTORS' ELECTION FOR DISTRICT IN A MANAGEMENT AREA. (a) For a district created under Section 36.015, not [Not] later than the 120th ~~[60th]~~ day after the date all temporary directors have been appointed and have qualified, the temporary directors shall meet and order an election to be held within the boundaries of the proposed district to approve the creation of the district and to elect permanent directors.

(d) The ballot for the election must be printed to provide for voting for or against the proposition: "The creation of the \_\_\_\_\_ Groundwater Conservation District." If the district levies a maintenance tax for payment of its expenses, then an additional ~~[the]~~ proposition shall be included with ~~[include]~~ the following language: "The ~~[and the]~~ levy of a maintenance tax at a rate not to exceed \_\_\_\_\_ cents for each \$100 of assessed valuation." The same ballot or another ballot must provide for the election of permanent directors, in accordance with Section 36.059.

(g) If a majority of the votes cast at the election are against the creation of the district, the temporary board shall declare the district defeated and shall enter the result in its minutes. The temporary board shall continue operations in accordance with Subsection (h).

(i) If a majority of the votes cast at the election are against the levy of a maintenance tax, the district shall set production fees to pay for the district's regulation of groundwater in the district, including fees based on the amount of water to be withdrawn from a well.

SECTION 2.40. Subchapter B, Chapter 36, Water Code, is amended by adding Section 36.0171 to read as follows:

Sec. 36.0171. TAX AUTHORITY AND DIRECTORS' ELECTION FOR DISTRICT IN A PRIORITY GROUNDWATER MANAGEMENT AREA. (a) For a district created under Section 36.0151, not later than the 120th day after the date all temporary directors have been appointed and have qualified, the temporary directors shall meet and order an election to be held within the boundaries of the proposed district to authorize the district to assess taxes and to elect permanent directors.

(b) In the order calling the election, the temporary directors shall designate election precincts and polling places for the election. In designating the polling places, the temporary directors shall consider the needs of all voters for conveniently located polling places.

(c) The temporary directors shall publish notice of the election at least once in at least one newspaper with general circulation within the boundaries of the proposed district. The notice must be published before the 30th day preceding the date of the election.

(d) The ballot for the election must be printed to provide for voting for or against the proposition: "The levy of a maintenance tax by the Groundwater Conservation District at a rate not to exceed \_\_\_\_\_ cents for each \$100 of assessed valuation." The same ballot or another ballot must provide for the election of permanent directors, in accordance with Section 36.059.

(e) Immediately after the election, the presiding judge of each polling place shall deliver the returns of the election to the temporary board, and the board shall canvass the returns, declare the result, and turn over the operations of the district to the elected permanent directors. The board shall file a copy of the election result with the commission.

(f) If a majority of the votes cast at the election favor the levy of a maintenance tax, the temporary board shall declare the levy approved and shall enter the result in its minutes.

(g) If a majority of the votes cast at the election are against the levy of a maintenance tax, the temporary board shall declare the levy defeated and shall enter the result in its minutes.

(h) If the majority of the votes cast at the election are against the levy of a maintenance tax, the district shall set permit fees to pay for the district's regulation of groundwater in the district, including fees based on the amount of water to be withdrawn from a well.

SECTION 2.41. Section 36.019, Water Code, is amended to read as follows:

Sec. 36.019. CONFIRMATION ELECTION IN DISTRICT INCLUDING LAND IN MORE THAN ONE COUNTY. (a) A district, the major portion of which is located in one county, may not be organized to include land in another county unless the election held in the other county to confirm and ratify the creation of the district is approved by a majority of the voters of the other county voting in an election called for that purpose.

(b) This section does not apply to districts created under Section 36.0151.

SECTION 2.42. Section 36.060(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 \$9,000 [~~\$6,000~~] a year.

SECTION 2.43. Section 36.066(g), Water Code, is amended to read as follows:

(g) If the district prevails in any suit other than a suit in which it voluntarily intervenes, ~~the district may seek and the court shall grant [it may]~~, in the same action, ~~recovery [recover reasonable fees] for attorney's fees [attorneys], costs for expert~~

witnesses, and other costs incurred by the district before the court. The amount of the attorney's fees shall be fixed by the court.

SECTION 2.44. Section 36.101(a), Water Code, is amended to read as follows:

(a) A district may make and enforce rules to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter.

SECTION 2.45. Sections 36.102(b) and (d), Water Code, are amended to read as follows:

(b) The board by rule may set reasonable civil penalties for breach of any rule of the district ~~[that shall]~~ not to exceed \$5,000 per day per violation, and each day of a continuing violation constitutes a separate violation ~~[the jurisdiction of a justice court as provided by Section 27.031, Government Code]~~. In addition to this penalty or any other penalty provided by law, the district may seek and the court shall grant a penalty equal to 115 percent of the economic benefit gained from the violation.

(d) If the district prevails in any suit to enforce its rules, the district may seek and the court shall grant ~~[it may]~~, in the same action, recovery ~~[recover reasonable fees]~~ for attorney's fees ~~[attorneys]~~, costs for expert witnesses, and other costs incurred by the district before the court. The amount of the attorney's fees shall be fixed by the court.

SECTION 2.46. Section 36.1071, Water Code, is amended by amending Subsections (a) and (b) and adding Subsection (h) to read as follows:

(a) Following notice and hearing, the district shall, in coordination with surface water management entities on a regional basis, develop a comprehensive management plan which addresses the following management goals, as applicable:

- (1) providing the most efficient use of groundwater;
- (2) controlling and preventing waste of groundwater;
- (3) controlling and preventing subsidence;
- (4) addressing conjunctive surface water management issues; ~~[and]~~
- (5) addressing natural resource issues;
- (6) addressing drought conditions; and
- (7) addressing conservation.

(b) After January 5, 2002, a [A] district management plan, or any amendments to a district management plan, shall be developed by the district using the district's best available data and forwarded to the regional water planning group for consideration in their planning process ~~[adopted after the Texas Water Development Board approval of a regional water plan for the region in which the district is located shall be consistent with the regional water plan]~~.

(h) In developing its management plan, the district shall use the groundwater availability modeling information provided by the executive administrator in conjunction with any available site-specific information provided by the district and acceptable to the executive administrator.

SECTION 2.47. Section 36.1072, Water Code, is amended by adding Subsection (g) to read as follows:

(g) In this subsection, "board" means the Texas Water Development Board. A person with a legally defined interest in groundwater in a district or the regional water planning group may file a petition with the board stating that a conflict requiring resolution may exist between the district's certified groundwater conservation district management plan developed under Section 36.1071 and the state water plan. If a

conflict exists, the board shall facilitate coordination between the involved person or regional water planning group and the district to resolve the conflict. If conflict remains, the board shall resolve the conflict. The board action under this provision may be consolidated, at the option of the board, with related action under Section 16.053(p). If the board determines that resolution of the conflict requires a revision of the certified groundwater conservation district management plan, the board shall suspend the certification of the plan and provide information to the district. The district shall prepare any revisions to the plan specified by the board and shall hold, after notice, at least one public hearing at some central location within the district. The district shall consider all public and board comments, prepare, revise, and adopt its plan, and submit the revised plan to the board for certification. On the request of the district or the regional water planning group, the board shall include discussion of the conflict and its resolution in the state water plan that the board provides to the governor, the lieutenant governor, and the speaker of the house of representatives under Section 16.051(e).

SECTION 2.48. Section 36.108, Water Code, is amended to read as follows:

Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA. (a) If two or more districts are located within the boundaries of the same management area, each district shall prepare a comprehensive management plan as required by Section 36.1071 covering that district's respective territory. On completion and certification of the plan as required by Section 36.1072, each district shall forward a copy of the new or revised management plan to the other districts in the management area. The boards of the districts shall consider the plans individually and shall compare them to other management plans then in force in the management area.

(b) The board of directors of each district in the management area may, by resolution, call for [a] joint planning [meeting] with [the boards of directors of] the other districts in the management area to review the management plans and accomplishments for the management area. [The boards shall meet to consider the plans individually and shall compare them to other management plans then in force in the management area.] In reviewing the management plans, the boards shall consider:

(1) the goals of each management plan and its impact on planning throughout the management area;

(2) the effectiveness of the measures established by each management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the management area generally; and

(3) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management area.

(c) If a [A] joint meeting of the boards of directors is called, the meeting must be held in accordance with [the Open Meetings Act,] Chapter 551, Government Code. Notice of the meeting shall be given in accordance with the requirements for notice of district board of directors meetings under that Act. In addition, notice of the meeting shall be published not later than the 30th day before the date of the scheduled meeting in a newspaper with general circulation in each county in the management area.

(d) A district in the management area may file with good cause a petition with the commission requesting an inquiry if the petitioner district adopted a resolution calling for joint planning and the other district or districts refused to join in the planning process or the process failed to result in adequate planning, and the petition provides evidence [believes] that:

(1) another district in the management area has failed to adopt rules;  
(2) the groundwater in the management area is not adequately protected by the rules adopted by another district; or

(3) the groundwater in the management area is not adequately protected due to the failure of another district to enforce substantial compliance with its rules.

(e) Not later than the 90th day after the date the petition is filed, the commission shall review the petition and either:

(1) dismiss it if it finds that the evidence is not adequate to show that any of the conditions alleged in the petition exist; or

(2) select a review panel as provided in Subsection (f).

(f) If the petition is not dismissed under Subsection (e), the [The] commission shall [may] appoint a review panel consisting of a chairman and four other members. A director or general manager of a district located outside the management area that is the subject of the petition may be appointed to the review panel. The commission may not appoint more than two members of the review panel from any one district. The commission also shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the panel.

(g) Not later than the 120th day after appointment, the review panel shall review the petition and any evidence relevant to the petition and, in a public meeting, consider and adopt [prepare] a report to be submitted to the commission. The commission may direct the review panel to conduct public hearings at a location in the management area to take evidence on the petition. The review panel may attempt to negotiate a settlement or resolve the dispute by any lawful means.

(h) In its report, the review panel shall include:

(1) a summary of all evidence taken in any hearing on the petition;

(2) a list of findings and recommended actions appropriate for the commission to take and the reasons it finds those actions appropriate; and

(3) any other information the panel considers appropriate.

(i) The review panel shall submit its report to the commission.

(j) Districts located within the same management areas or in adjacent management areas may contract to jointly conduct studies or research, or to construct projects, under terms and conditions that the districts consider beneficial. These joint efforts may include studies of groundwater availability and quality, aquifer modeling, and the interaction of groundwater and surface water; educational programs; the purchase and sharing of equipment; and the implementation of projects to make groundwater available, including aquifer recharge, brush control, weather modification, desalination, regionalization, and treatment or conveyance facilities. The districts may contract under their existing authorizations including those of Chapter 791, Government Code, if their contracting authority is not limited by Sections 791.011(c)(2) and (d)(3) and Section 791.014, Government Code.

SECTION 2.49. Section 36.113, Water Code, is amended by amending Subsection (d), adding a new Subsection (e), and relettering existing Subsections (e) and (f) as Subsections (f) and (g) to read as follows:

(d) Before granting or denying a permit, the district shall consider whether:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;

(2) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;

(3) the proposed use of water is dedicated to any beneficial use;

(4) the proposed use of water is consistent with the district's certified water management plan;

(5) the applicant has agreed to avoid waste and achieve water conservation; and

(6) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

(e) The district may impose more restrictive permit conditions on new permit applications and increased use by historic users if the limitations:

(1) apply to all subsequent new permit applications and increased use by historic users, regardless of type or location of use;

(2) bear a reasonable relationship to the existing district management plan; and

(3) are reasonably necessary to protect existing use.

(f) Permits may be issued subject to the rules promulgated by the district and subject to terms and provisions with reference to the drilling, equipping, completion, or alteration of wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.

(g) [(f)] A district may require that changes in the withdrawal and use of groundwater under a permit not be made without the prior approval of a permit amendment issued by the district.

SECTION 2.50. Section 36.116, Water Code, is amended to read as follows:

Sec. 36.116. REGULATION OF SPACING AND PRODUCTION. (a) In order to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste, provided that agriculture, municipal and the natural resources are protected, a district by rule may regulate:

(1) [provide for] the spacing of water wells by:

(A) requiring all water wells to be spaced a certain distance from property lines or adjoining wells;

(B) requiring wells with a certain production capacity, pump size, or other characteristic related to the construction or operation of and production from a well to be spaced a certain distance from property lines or adjoining wells; or

(C) imposing spacing requirements adopted by the board; and

(2) the production of groundwater by:

(A) setting production limits on wells;

(B) limiting the amount of water produced based on acreage or tract size;

(C) limiting the amount of water that may be produced from a defined number of acres assigned to an authorized well site;

(D) limiting the maximum amount of water that may be produced on the basis of acre-feet per acre or gallons per minute per well site; or

(E) any combination of the above [and may regulate the production of wells].

(b) In promulgating any rules limiting groundwater production, the district may preserve historic use before the effective date of the rules to the maximum extent practicable consistent with the district's comprehensive management plan under Section 36.1071.

(c) In regulating the production of groundwater based on tract size or acreage, a district may consider the service area or service needs of a retail water utility. For purposes of this subsection, "retail water utility" shall have the meaning provided at Section 13.002.

SECTION 2.51. Section 36.117, Water Code, is amended to read as follows:

Sec. 36.117. EXEMPTIONS; EXCEPTION; LIMITATIONS. (a) A district may exempt wells from the requirement of obtaining [~~requirements to obtain~~] a drilling permit, an operating permit, or any other permit required by this chapter or the district's rules.

(b) A district may not require any [a] permit issued by the district for:

(1) [~~drilling or producing from~~] a well used solely for domestic use or for providing water for livestock or poultry on a tract of land larger than 10 acres that is either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;

(2) the drilling of a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the well is located on the same lease or field associated with the drilling rig; or [alteration of the size of a well or to restrict the production of a well if the water produced or to be produced from the well is used or to be used to supply the domestic needs of 10 or fewer households and a person who is a member of each household is either the owner of the well, a person related to the owner or a member of the owner's household within the second degree by consanguinity, or an employee of the owner;]

(3) the drilling of a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from such a well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water. [~~or alteration of the size of a well or to restrict the production from the well if the water produced or to be produced from the well is used or to be used to provide water for feeding livestock and poultry connected with farming, ranching, or dairy enterprises; or~~

[~~(4) water wells to supply water for hydrocarbon production activities, regardless of whether those wells are producing, that are associated with any well permitted by the Railroad Commission of Texas drilled before September 1, 1985:~~

[(b) The board shall adopt rules determining the applicability of Subsection (a)(3) to facilities used primarily for feeding livestock;]

(c) [The district shall not deny the owner of a tract of land, or his lessee, who has no well equipped to produce more than 25,000 gallons a day on the tract, either a permit to drill a well on his land or the privilege to produce groundwater from his land, subject to the rules of the district.

[(d)] A district may not restrict the production of any well that is exempt from permitting under Subsection (b)(1) [equipped to produce 25,000 gallons or less a day].

(d) Notwithstanding Subsection (b), a district may require a well to be permitted by the district and to comply with all district rules if:

(1) the purpose of a well exempted under Subsection (b)(2) is no longer solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas; or

(2) the withdrawals from a well exempted under Subsection (b)(3) are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code.

(e) An entity holding a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, that authorizes the drilling of a water well shall report monthly to the district:

(1) the total amount of water withdrawn during the month;

(2) the quantity of water necessary for mining activities; and

(3) the quantity of water withdrawn for other purposes. ~~[Nothing in this chapter applies to wells drilled for oil, gas, sulphur, uranium, or brine, or for core tests, or for injection of gas, saltwater, or other fluid, or for any other purpose, under permits issued by the Railroad Commission of Texas. A district may not require a drilling permit for a well to supply water for drilling any wells permitted by the Railroad Commission of Texas. Any well that ceases to be used for these purposes and is then used as an ordinary water well is subject to the rules of the district. Water wells drilled after September 1, 1997, to supply water for hydrocarbon production activities must meet the spacing requirements of the district unless no space is available within 300 feet of the production well or the central injection station.]~~

(f) Notwithstanding Subsection (d), a district may not require a well exempted under Subsection (b)(3) to comply with the spacing requirements of the district. ~~[Water wells exempted under this section shall be equipped and maintained so as to conform to the district's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.]~~

(g) A district may not deny an application for a permit to drill and produce water for hydrocarbon production activities if the application meets all applicable rules as promulgated by the district.

(h) A [shall require] water well [wells] exempted under Subsection (a) or (b) shall:

(1) [this section to] be registered in accordance with rules promulgated by the district; and

(2) [before drilling. All exempt water wells shall] be equipped and maintained so as to conform to the district's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.

(i) The driller of a well exempted under Subsection (a) or (b) shall file the drilling log with the district.

(j) [(h)] A well to supply water for a subdivision of land for which a plat approval is required by Chapter 232, Local Government Code, [law] is not exempted under Subsection (b) [this section].

(k) Groundwater withdrawn from a well exempt from permitting or regulation under this section and subsequently transported outside the boundaries of the district is subject to any applicable production and export fees under Sections 36.122 and 36.205.

(l) This section applies to water wells, including water wells used to supply water for activities related to the exploration or production of hydrocarbons or minerals. This section does not apply to production or injection wells drilled for oil, gas, sulphur, uranium, or brine, or for core tests, or for injection of gas, saltwater, or other fluids, under permits issued by the Railroad Commission of Texas.

SECTION 2.52. Section 36.122, Water Code, is amended to read as follows:

Sec. 36.122. TRANSFER OF GROUNDWATER OUT OF DISTRICT. (a) If an application for a permit or an amendment to a permit under Section 36.113 proposes the transfer of groundwater outside of a district's boundaries, the district may also consider the provisions of this section in determining whether to grant or deny the permit or permit amendment.

(b) A district may promulgate rules requiring a person to obtain a permit or an amendment to a permit under Section 36.113 from the district for the transfer of groundwater out of the district to:

(1) increase, on or after March 2, 1997, the amount of groundwater to be transferred under a continuing arrangement in effect before that date; or

(2) transfer groundwater out of the district on or after March 2, 1997, under a new arrangement.

(c) Except as provided in Section 36.113(e), the district may not impose more restrictive permit conditions on transporters than the district imposes on existing in-district users.

(d) ~~(b)~~ The district may impose a reasonable fee for processing an application ~~[for a permit]~~ under this section. The fee may not exceed fees that the district imposes for processing other applications under Section 36.113. An application filed to comply with this section shall be considered and processed under the same procedures as other applications for permits under Section 36.113 and shall be combined with applications filed to obtain a permit for in-district water use under Section 36.113 from the same applicant.

(e) The district may impose a reasonable fee or surcharge for an export fee using one of the following methods:

(1) a fee negotiated between the district and the transporter;

(2) a rate not to exceed the equivalent of the district's tax rate per hundred dollars of valuation for each thousand gallons of water transferred out of the district or 2.5 cents per thousand gallons of water, if the district assesses a tax rate of less than 2.5 cents per hundred dollars of valuation; or

(3) for a fee-based district, a 50 percent export surcharge, in addition to the district's production fee, for water transferred out of the district.

(f) ~~(c)~~ Before issuing a permit under this section, the district must give notice of the application and hold a public hearing.

~~(d)~~ In reviewing a proposed transfer of groundwater out of the district ~~[determining whether to issue a permit under this section]~~, the district shall consider:

(1) the availability of water in the district and in the proposed receiving area during the period for which the water supply is requested;

(2) ~~[the availability of feasible and practicable alternative supplies to the applicant;~~

~~[(3) the amount and purposes of use in the proposed receiving area for which water is needed;~~

~~[(4) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the district; and~~

(3) ~~(5)~~ the approved regional water plan and certified district management plan.

(g) ~~(e)~~ The district may not deny a permit based on the fact that the applicant seeks to transfer groundwater outside of the district but may limit a permit issued under this section if conditions in Subsection (f) ~~(d)~~ warrant the limitation, subject to Subsection (c).

(h) ~~(f)~~ In addition to conditions provided by Section 36.1131, the permit shall specify:

- (1) the amount of water that may be transferred out of the district; and
- (2) the period for which the water may be transferred.

(i) The period specified by Subsection (h)(2) shall be:

(1) at least three years if construction of a conveyance system has not been initiated prior to the issuance of the permit; or

(2) at least 30 years if construction of a conveyance system has been initiated prior to the issuance of the permit.

(j) A term of five years under Subsection (i) shall automatically be extended to 30 years if construction of a conveyance system is begun before the expiration of the initial five-year term.

(k) Notwithstanding the period specified in Subsections (i) and (j) during which water may be transferred under a permit, a district may periodically review the amount of water that may be transferred under the permit and may limit the amount if additional factors considered in Subsection (f) warrant the limitation, subject to Subsection (c). The review described by this subsection may take place not more frequently than the period provided for the review or renewal of regular permits issued by the district. In its determination of whether to renew a permit issued under this section, the district shall consider relevant and current data for the conservation of groundwater resources and shall consider the permit in the same manner it would consider any other permit in the district.

(l) A district is prohibited from using revenues obtained under Subsection (e) to prohibit the transfer of groundwater outside of a district. A district is not prohibited from using revenues obtained under Subsection (e) for paying expenses related to enforcement of this chapter or district rules.

(m) ~~(g)~~ A district may not prohibit the export of groundwater if the purchase was in effect on or before June 1, 1997.

(n) ~~(h)~~ This section applies only to a transfer of water that is initiated or increased after September 1, 1997 ~~[the effective date of this section]~~.

(o) ~~(i)~~ A district shall adopt rules as necessary to implement this section but may not adopt rules expressly prohibiting the export of groundwater.

(p) Subsection (e) does not apply to a district that is collecting an export fee or surcharge on March 1, 2001.

(q) For the purposes of this subsection, "retail public utility" and "retail public utilities" are defined by Section 13.002. A district may determine that a transfer of groundwater produced within the district's boundaries for use outside the district's boundaries will not be considered a transfer outside of district if:

(1) the transfer is for agricultural use on a tract located in a county contiguous to the district's boundaries;

(2) the transfer is for use as a potable water supply by a retail public utility and is within an authorized service area of which an appropriate portion, as determined by the district, is located inside the district's boundaries;

(3) the transfer involves an emergency potable water interconnect between retail public utilities; or

(4) the transfer is for use on a contiguous oil and gas field or unit.

SECTION 2.53. Section 36.205, Water Code, is amended to read as follows:

Sec. 36.205. **AUTHORITY TO SET FEES.** (a) A district may set fees for administrative acts of the district, such as filing applications. Fees set by a district may not unreasonably exceed the cost to the district of performing the administrative function for which the fee is charged.

(b) A district shall set and collect fees for all services provided outside the boundaries of the district. The fees may not unreasonably exceed the cost to the district of providing the services outside the district.

(c) A district may assess production fees based on the amount of water authorized by permit to be withdrawn from a well or the amount actually withdrawn. A district may assess the fees in lieu of, or in conjunction with, any taxes otherwise levied by the district. A district may use revenues generated by the fees for any lawful purpose. Production fees [Fees based on the amount of water to be withdrawn from a well] shall not exceed:

(1) \$1 [one dollar] per acre-foot payable annually [acre-foot] for water used for agricultural use [the purpose of irrigating agricultural crops]; or

(2) \$10 per acre-foot payable annually [17 cents per thousand gallons] for water used for any other purpose.

(d) The Barton Springs-Edwards Aquifer Conservation District and the Guadalupe County Groundwater Conservation District may not charge production fees for an annual period greater than \$1 per acre-foot for water used for agricultural use or 17 cents per thousand gallons for water used for any other purpose. The Barton Springs-Edwards Aquifer Conservation District [A district affected by Subsection (c)(2) that also] may assess a water use fee against a specific municipality in [shall assess] an amount not to exceed 60 percent of the total funding of the district received from water use fees assessed against that municipality and other nonexempt users in the district. This subsection shall take precedence over all prior enactments.

(e) Subsection (c) does not apply to the following districts:

(1) the Edwards Aquifer Authority;

(2) the Fort Bend Subsidence District; ~~[or]~~

(3) the Harris-Galveston Coastal Subsidence District;

(4) the Barton Springs-Edwards Aquifer Conservation District; or

(5) any district that collects a property tax and that was created before September 1, 1999, unless otherwise authorized by special law.

(f) A district, including a district described under Subsection (d), may assess a production fee under Subsection (c) for any water produced under an exemption under Section 36.117 if that water is subsequently sold to another person.

(g) A district may assess a transportation fee under Section 36.122.

SECTION 2.54. Section 36.206, Water Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The rate of fees set for ~~[crop or livestock production or other]~~ agricultural uses shall be no more than 20 percent of the rate applied to municipal uses.

(c) District fees may be used to purchase groundwater rights if the purchased rights are acquired for conservation purposes.

SECTION 2.55. Subchapter I, Chapter 36, Water Code, is amended by adding Section 36.3011 to read as follows:

Sec. 36.3011. FAILURE OF A DISTRICT TO CONDUCT JOINT PLANNING.

(a) If the board of a district within a common management area fails to forward a copy of its new or revised certified management plan under Section 36.108, the commission shall take appropriate action under Section 36.303.

(b) Not later than the 45th day after receiving the review panel's report under Section 36.108, the executive director or the commission shall take action to implement any or all of the panel's recommendations. If the commission finds that a district in the joint planning area has failed to adopt rules, the groundwater in the management area is not adequately protected by the rules adopted by the district, or the groundwater in the management area is not adequately protected because of the district's failure to enforce substantial compliance with its rules, the commission may take any action it considers necessary in accordance with Section 36.303.

SECTION 2.56. Section 36.303(a), Water Code, is amended to read as follows:

(a) If Section 36.108, 36.301, or 36.302(f) applies, the commission, after notice and hearing in accordance with Chapter 2001, Government Code, shall take action the commission considers appropriate, including:

(1) issuing an order requiring the district to take certain actions or to refrain from taking certain actions;

(2) dissolving the board in accordance with Sections 36.305 and 36.307 and calling an election for the purpose of electing a new board;

(3) requesting the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of the groundwater conservation district [removing the district's taxing authority]; or

(4) dissolving the district in accordance with Sections 36.304, 36.305, and 36.308.

SECTION 2.57. Subchapter I, Chapter 36, Water Code, is amended by adding Section 36.3035 to read as follows:

Sec. 36.3035. APPOINTMENT OF A RECEIVER. (a) If the attorney general brings a suit for the appointment of a receiver for a district, a district court shall appoint a receiver if an appointment is necessary to protect the assets of the district.

(b) The receiver shall execute a bond in an amount to be set by the court to ensure the proper performance of the receiver's duties.

(c) After appointment and execution of bond, the receiver shall take possession of the assets of the district specified by the court.

(d) Until discharged by the court, the receiver shall perform the duties that the court directs to preserve the assets and carry on the business of the district and shall strictly observe the final order involved.

(e) On a showing of good cause by the district, the court may dissolve the receivership and order the assets and control of the business returned to the district.

SECTION 2.58. Section 51.149, Water Code, is amended to read as follows:

Sec. 51.149. CONTRACTS. (a) No approvals other than those specified in Subsection (c) and in Section 1, Chapter 778, Acts of the 74th Legislature, Regular Session, 1995, need be obtained in order for a contract between a district and a municipality to be valid, binding, and enforceable against all parties to the contract. After approval by a majority of the electors voting at an election conducted in the manner of a bond election, a district may make payments under a contract from taxes for debt that does not exceed 30 years.

(b) [(d)] A contract may provide that the district will make payments under the contract from proceeds from the sale of notes or bonds, from taxes, from any other income of the district, or from any combination of these.

(c) ~~(e)~~ A district may make payments under a contract from taxes, other than maintenance taxes, after the provisions of the contract have been approved by a majority of the electors voting at an election held for that purpose.

(d) ~~(f)~~ Any contract election may be held at the same time as and in conjunction with an election to issue bonds, and the procedure for calling the election, giving notice, conducting the election, and canvassing the returns shall be the same as the procedure for a bond election.

(e) A district created pursuant to Chapter 628, Acts of the 68th Legislature, Regular Session, 1983, is defined as a municipal corporation and political subdivision pursuant to Chapter 405, Acts of the 76th Legislature, Regular Session, 1999, and is authorized to take action accordingly.

SECTION 2.59. Section 1.03, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Subdivisions (26) and (27) to read as follows:

(26) "Agricultural use" means any use or activity involving any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) wildlife management;

(E) raising or keeping equine animals; and

(F) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(27) "Nursery grower" means a person who grows more than 50 percent of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, "grow" means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item before sale or lease and typically includes activities associated with the production or multiplying of stock, such as the development of new plants from cuttings, grafts, plugs, or seedlings.

SECTION 2.60. Section 1.29(e), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(e) In developing an equitable fee structure under this section, the authority may establish different fee rates on a per acre-foot basis for different types of use. The fees must be equitable between types of uses. The fee rate for agricultural use shall be based on the volume of water withdrawn and may not be more than \$2 per acre-foot ~~[20 percent of the fee rate for municipal use]~~. The authority shall assess the fees on the amount of water a permit holder is authorized to withdraw under the permit.

SECTION 2.61. 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 payers and ratepayers, 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 2.62. Notwithstanding Section 26.028(c), Water Code, a public hearing on an application by a political subdivision for a commission permit under Section 26.027, Water Code, for effluent composed of 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.

### ARTICLE 3. DISTRICT RATIFICATIONS

#### PART 1. COW CREEK GROUNDWATER

##### CONSERVATION DISTRICT

SECTION 3.0101. RATIFICATION OF CREATION. (a) The creation of the Cow Creek Groundwater Conservation District in Kendall County by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.0108 of this part. The district is a governmental agency and a body politic and corporate.

(b) The district may develop and implement regulatory, conservation, and recharge programs that preserve and protect groundwater resources located in the district.

SECTION 3.0102. DEFINITIONS. In this part:

(1) "District" means the Cow Creek Groundwater Conservation District.

(2) "Retail public utility" means a retail public utility as defined by Section 13.002, Water Code, that is providing service in the district on September 1, 2001.

(3) "Well" means any excavation drilled or dug into the ground that may intercept or penetrate a water-bearing stratum or formation.

SECTION 3.0103. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of Kendall County.

SECTION 3.0104. POWERS. Except as otherwise provided by this part, the district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of the state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law, including Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, that is in conflict or inconsistent with this part.

SECTION 3.0105. BOARD OF DIRECTORS. (a) The district is governed by a board of five directors.

(b) Temporary directors serve until initial directors are elected under Sections 3.0108 and 3.0109 of this part or until this part expires under Section 3.0108 of this part, whichever occurs first.

(c) Initial directors serve until permanent directors are elected under Section 3.0110 of this part.

(d) Permanent directors serve staggered four-year terms.

(e) A director serves until the director's successor has qualified.

(f) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(g) A vacancy in the office of director is filled by appointment of the board until the next election for directors. At the next election for directors, a person shall be elected to fill the position. If the position is not scheduled to be filled at the election, the person elected to fill the position shall serve only for the remainder of the unexpired term.

SECTION 3.0106. METHOD OF ELECTING DIRECTORS: COMMISSIONERS PRECINCTS. (a) The directors of the district shall be elected according to the commissioners precinct method as provided by this part.

(b) One director shall be elected by the qualified voters of the entire district and one director shall be elected from each county commissioners precinct by the qualified voters of that precinct.

(c) A person shall indicate on the application for a place on the ballot the precinct that the person seeks to represent or that the person seeks to represent the district at large.

(d) When the boundaries of the commissioners precincts are changed, each director in office on the effective date of the change or elected to a term of office beginning on or after the effective date of the change serves in the precinct to which the director was elected for the entire term to which the director was elected, even though the change in boundaries places the person's residence outside the precinct for which the person was elected.

(e) To be eligible to be a candidate for or to serve as director from a county commissioners precinct, a person must be a registered voter in the precinct from which the person is elected or appointed. To be eligible to be a candidate for or to serve as director at large, a person must be a registered voter in the district.

SECTION 3.0107. TEMPORARY DIRECTORS. (a) The temporary board of directors shall be appointed by the county commissioners court. One temporary director shall be appointed from each commissioners precinct, and one temporary director shall be a director at large.

(b) If a temporary director fails to qualify for office, the temporary directors who have qualified shall appoint a person to fill the vacancy. If at any time there are fewer than three qualified temporary directors, the Texas Natural Resource Conservation Commission shall appoint the necessary number of persons to fill all vacancies on the board.

SECTION 3.0108. CONFIRMATION AND INITIAL DIRECTORS ELECTION. (a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect five initial directors.

(b) A person who wishes to be a candidate for the office of initial director may file an application with the temporary board of directors to have the candidate's name printed on the ballot as provided by Section 3.0106 of this part.

(c) At the confirmation and initial directors election, the temporary board of directors shall have the names of the five persons serving as temporary directors placed on the ballot by commissioners precinct and as at-large director, together with the name of any candidate filing for the office of director as provided by this section.

(d) If a majority of the votes cast at the election favor the creation of the district, the temporary directors shall declare the district created. If a majority of the votes cast at the election are against the creation of the district, the temporary directors shall declare the district defeated. The temporary directors shall file a copy of the election results with the Texas Natural Resource Conservation Commission.

(e) If a majority of the votes cast at the election are against the creation of the district, the temporary directors may call and hold subsequent elections to confirm establishment of the district and to elect initial directors. A subsequent election may not be held earlier than the first anniversary of the date on which the previous election was held. If the district is not created before September 1, 2006, this part expires on that date.

(f) Section 41.001(a), Election Code, does not apply to a confirmation and initial directors election held under this section.

(g) Section 36.017(a), Water Code, does not apply to the district.

(h) Except as provided by this section, a confirmation and directors election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

**SECTION 3.0109. INITIAL DIRECTORS.** (a) If the district is created at the election, the temporary directors, at the time the vote is canvassed, shall declare the candidate receiving the most votes for each commissioners precinct or for the at-large director to be elected as the initial directors.

(b) The initial directors for Precincts 2 and 3 serve until the first regular meeting of the board of directors held after the first permanent directors election under Section 3.0110 of this part. The initial directors for Precincts 1 and 4 and the initial director representing the district at large serve until the first regular meeting of the board of directors held after the second permanent directors election under Section 3.0110 of this part.

**SECTION 3.0110. ELECTION OF PERMANENT DIRECTORS.** Beginning in the second year after the year in which the district is authorized to be created at a confirmation election, an election shall be held in the district on the first Saturday in May every two years to elect the appropriate number of directors to the board.

**SECTION 3.0111. ADDITIONAL AUTHORITY.** (a) The district may contract with one or more state agencies or other governmental bodies, including a county, a river authority, or another district, to carry out any function of the district.

(b) The district may require a drilling permit before a new well is drilled or an existing well is substantially altered. Notwithstanding an exemption for a well under Section 36.117, Water Code, written authorization granted by the district must be received before a new well is drilled or an existing well is substantially altered.

(c) The district may participate in the construction, implementation, and maintenance of best management practices for water resource management in the district and may engage in and promote the acceptance of best management practices through education efforts sponsored by the district. Construction, implementation, and maintenance of best management practices must address water quantity and quality practices such as brush management, prescribed grazing, recharge structures, water and silt detention and retention structures, plugging of abandoned wells, rainwater harvesting, and other treatment measures for the conservation of water resources.

(d) Reasonable fees, as determined by the district, may be imposed on an annual basis on each nonexempt well. The district shall adopt any rules necessary for the assessment and collection of fees under this subsection.

(e) The district may use money collected from fees:

(1) in any manner necessary for the management and operation of the district;

(2) to pay all or part of the principal of and interest on district bonds or notes; and

(3) for any purpose consistent with the district's certified water management plan.

(f) The district shall grant an exemption or other relief from ad valorem taxes on property on which a water conservation initiative has been implemented. The district shall adopt rules to implement this subsection. A retail public utility shall receive the same exemption or relief from ad valorem taxes on property as any other customer of the district would receive.

(g) As a water conservation initiative to encourage retail public utilities to obtain water supplies from sources other than groundwater, the district shall grant an exemption or other relief from ad valorem taxes on property served by a retail public utility based on:

(1) the percentage of potable water supplied within the district by the retail public utility from sources other than groundwater compared to the total water supplied by the retail public utility for the preceding year; and

(2) the percentage of wastewater effluent produced by the retail public utility that is used as reclaimed water within the district compared to the total wastewater effluent produced by the retail public utility for the preceding year. The district may consider the impact of floods and equipment breakage on the retail public utility's ability to supply water from sources other than groundwater.

(h) The total amount of the exemption or other relief from ad valorem taxes may not exceed one-half of the tax levied by the district.

**SECTION 3.0112. PROHIBITED ACTS.** The district may not:

(1) impose an ad valorem property tax for administrative, operation, or maintenance expenses that exceeds the lesser of the rate approved by the majority of the qualified voters voting in the election authorizing the tax, or three cents per \$100 valuation;

(2) require the owner of a well used solely for domestic or livestock purposes to install a meter or measuring device on the well;

(3) enter into any contract or engage in any action to supply water to any person in the service area of any municipality or retail public utility located in the district, except with the consent of the municipality or retail public utility; or

(4) issue any bonds secured by ad valorem taxes before September 1, 2004.

#### **PART 2. CROSSROADS GROUNDWATER CONSERVATION DISTRICT**

**SECTION 3.0201. RATIFICATION OF CREATION.** The creation of the Crossroads Groundwater Conservation District in Victoria County by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.0210 of this part.

**SECTION 3.0202. DEFINITIONS.** In this part:

(1) "Board" means the district's board of directors.  
(2) "Commissioners court" means the Victoria County Commissioners Court.

(3) "District" means the Crossroads Groundwater Conservation District.

**SECTION 3.0203. LEGISLATIVE FINDINGS.** The legislature finds that:

(1) the organization of the district is feasible and practicable;  
(2) all of the land to be included in, and the residents of, the district will benefit from the creation of the district;  
(3) there is a public necessity for the district; and  
(4) the creation of the district will provide a benefit and utility to the public.

**SECTION 3.0204. BOUNDARIES.** The boundaries of the district are coextensive with the boundaries of Victoria County.

**SECTION 3.0205. APPLICATION OF CHAPTER 36, WATER CODE; GENERAL POWERS AND DUTIES.** (a) Except to the extent of any conflict with this part or as specifically limited by this part, the district is governed by and subject to Chapter 36, Water Code, and may exercise all of the powers contained in that chapter, including the power to issue bonds and levy and collect taxes and the power of eminent domain. The district may exercise all of the duties provided by Chapter 36, Water Code.

(b) This part prevails over any conflicting or inconsistent provision of Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999.

**SECTION 3.0206. BOARD OF DIRECTORS.** (a) The district is governed by a board of seven directors.

(b) The directors for Places 1-4 are appointed by the commissioners court. The directors for Places 5-7 are appointed by the city council of the City of Victoria.

(c) The directors shall select from their members persons to serve as chairman, vice chairman, and secretary.

**SECTION 3.0207. QUALIFICATIONS OF BOARD MEMBERS.** To be qualified for appointment as a director, a person must be a resident of the district and must be at least 18 years of age.

**SECTION 3.0208. TERM OF OFFICE.** (a) Except for the temporary and initial directors of the district, directors serve staggered four-year terms.

(b) A vacancy in the office of director is filled for the remainder of the term by appointment by the commissioners court or the city council of the City of Victoria, as appropriate.

**SECTION 3.0209. TEMPORARY DIRECTORS.** (a) On September 1, 2001, the following persons are designated as temporary directors of the district:

- (1) Place 1: Mark Dierlam
- (2) Place 2: Rocky Sanders
- (3) Place 3: S. F. Ruschhaupt III
- (4) Place 4: Joseph Dial
- (5) Place 5: Stephen Diebel
- (6) Place 6: Jerry James
- (7) Place 7: Denise McCue

(b) If a temporary director fails to qualify for office or if a vacancy occurs in the office of temporary director for any reason, the commissioners court shall appoint a person to fill a vacancy in Place 1, 2, 3, or 4, and the city council of the City of Victoria shall appoint a person to fill a vacancy in Place 5, 6, or 7.

(c) The temporary directors shall select from their members persons to serve as chairman, vice chairman, and secretary.

(d) The temporary directors serve until they declare the district created, at which time they become the initial directors of the district under Section 3.0211 of this part.

(e) To be qualified to serve as a temporary director, a person must be a resident of Victoria County and at least 18 years of age.

**SECTION 3.0210. CONFIRMATION ELECTION.** (a) Not later than October 1, 2001, and without the necessity of having a petition presented, the temporary directors shall meet and call an election to be held not later than January 1, 2002, within the boundaries of the proposed district to confirm the creation of the district.

(b) Section 41.001(a), Election Code, does not apply to an election called under this section.

(c) The ballot for the election shall be printed to provide for a vote for or against the following propositions:

(1) the creation of the Crossroads Groundwater Conservation District in Victoria County; and

(2) the levy and collection of a property tax in the district.

(d) The temporary board may include other propositions on the ballot that it considers necessary.

(e) If a majority of votes cast at the election favor the creation of the district, the temporary directors shall declare the district created. If a majority of the votes cast at the election are against the creation of the district, the temporary directors shall declare the district defeated. The temporary directors shall file a copy of the election results with the Texas Natural Resource Conservation Commission.

(f) If the creation of the district is defeated, further elections may be called and held after the first anniversary of the most recent confirmation election. If the district is not created by September 1, 2006, this part expires.

**SECTION 3.0211. INITIAL DIRECTORS.** (a) On confirmation of the creation of the district under Section 3.0210 of this part, the temporary directors become the initial directors of the district and serve terms as provided by Subsection (b) of this section, except that not later than the 60th day after the date on which the temporary directors declare the district created, the commissioners court may replace any director in Places 1-4 and the city council of the City of Victoria may replace any director in Places 5-7.

(b) The initial directors for Places 1, 3, 5, and 7 serve for four years following the confirmation of the district. The initial directors for Places 2, 4, and 6 serve for two years following the confirmation of the district.

(c) If, for any reason, an appointed director is not qualified to take office at the first regular meeting of the board following the director's appointment, the director for that place shall continue to serve until a successor has qualified.

**SECTION 3.0212. LIMITATION ON TAXATION.** The district may not impose an ad valorem tax at a rate that exceeds two cents on the \$100 valuation of taxable property in the district.

### PART 3. HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT

**SECTION 3.0301. RATIFICATION OF CREATION.** The creation of the Hays Trinity Groundwater Conservation District in a portion of Hays County by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.0309 of this part.

**SECTION 3.0302. DEFINITIONS.** In this part:

- (1) "Commissioners court" means the Hays County Commissioners Court.
- (2) "District" means the Hays Trinity Groundwater Conservation District.

**SECTION 3.0303. BOUNDARIES.** The boundaries of the district are coextensive with the boundaries of Hays County, Texas, excluding any area in Hays County that on the effective date of this part is within another groundwater conservation district and that has authority to require a permit for the drilling or alteration of wells for the withdrawal of groundwater. Within 30 days of its initial meeting and prior to holding any confirmation election, the board of directors of the district shall prepare a description of the district boundaries and shall file the description with the county clerk of Hays County and the Texas Natural Resource Conservation Commission.

**SECTION 3.0304. POWERS.** (a) Except as provided by this part, the district has all the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law, including Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, that is in conflict or inconsistent with this part.

(b) The rights, powers, privileges, authority, functions, and duties of the district are subject to the continuing right of supervision of the state to be exercised by and through the Texas Natural Resource Conservation Commission.

(c) The district may not enter property to inspect an exempt well without the property owner's permission.

(d) The commissioners court, by resolution, may require an election to be conducted within six months to affirm or reverse a decision of the board of directors of the district.

(e) The district may not require well construction standards for residential wells more stringent than state standards for those wells.

**SECTION 3.0305. EXEMPTIONS.** (a) The following wells are exempt from Chapter 36, Water Code, rules and may not be regulated, permitted, or metered by the district:

(1) a well used to satisfy the domestic needs of a single private residential household and producing less than 25,000 gallons per day;

(2) a well used for conventional farming and ranching activities, excluding intensive operations such as aquaculture, livestock feedlots, and poultry operations.

(b) A well used for conventional farming and ranching activities, excluding intensive operations such as aquaculture, livestock feedlots, and poultry operations, is not required to obtain construction authorization.

**SECTION 3.0306. FISCAL RESPONSIBILITIES.** (a) The district each year shall prepare a budget showing the proposed expenditures and disbursements and the estimated receipts and collections for the following fiscal year and shall hold a public hearing on the proposed budget after publication of a notice of hearing in a newspaper of general circulation in the county at least once not less than 10 days prior to the date set for the hearing. A person who is a taxpayer of the district has the right to appear at the time and place designated in the notice and be heard with reference to any item shown in the proposed budget. The proposed budget must also show the amount of revenues expected to be collected during such fiscal year.

(b) At the written request of the commissioners court, the county auditor shall audit the performance of the district. The commissioners court may request a general audit of the performance of the district or may request an audit of only one or more particular duties, practices, functions, or other district matters.

**SECTION 3.0307. BOARD OF DIRECTORS.** (a) The district is governed by a board of five directors appointed by the commissioners court.

(b) A director must reside in the district.

(c) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(d) Directors serve staggered two-year terms.

(e) A director serves until the director's successor has qualified.

(f) If there is a vacancy on the board, the commissioners court shall appoint a director to serve the remainder of the term.

(g) The commissioners court shall appoint a director to succeed a director on or before the date the director's term expires.

(h) A director may not receive a salary or other compensation for service as a director but may be reimbursed for actual expenses of attending meetings at the rate in effect for employees of Hays County.

**SECTION 3.0308. APPOINTMENT AND TERMS OF INITIAL DIRECTORS.** Not later than the 31st day after the effective date of this part, the commissioners court shall appoint:

(1) two directors to serve terms expiring February 1, 2003; and

(2) three directors to serve terms expiring February 1, 2004.

**SECTION 3.0309. CONFIRMATION ELECTION.** (a) The initial directors shall call and hold an election to confirm establishment of the district not later than the second Saturday in May 2002.

(b) Section 41.001(a), Election Code, does not apply to a confirmation election held as provided by this section.

(c) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

(d) If the establishment of the district has not been confirmed at an election held under this section before the second anniversary of the effective date of this part, this part expires on that date.

**SECTION 3.0310. FUNDING AUTHORITY.** (a) The district may levy or collect a fee not to exceed \$300 for construction authorization for new wells completed after the effective date of this part, except as prohibited by Section 3.0305(b) of this part.

(b) The district may levy or collect a water utility service connection fee not to exceed \$300 for all new water service connections made after the effective date of this part. The fee may not be charged on connection fees to a water utility that has surface water as its sole source of water.

#### PART 4. LONE WOLF GROUNDWATER CONSERVATION DISTRICT

**SECTION 3.0401. RATIFICATION OF CREATION.** The creation of the Lone Wolf Groundwater Conservation District in Mitchell County by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.0407 of this part.

SECTION 3.0402. DEFINITION. In this part, "district" means the Lone Wolf Groundwater Conservation District.

SECTION 3.0403. GENERAL POWERS. The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of the state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law, including Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, that is in conflict or inconsistent with this part.

SECTION 3.0404. BOARD OF DIRECTORS. (a) The district is governed by a board of five directors.

(b) Temporary directors serve until initial directors are elected under Section 3.0407 of this part.

(c) Initial directors serve until permanent directors are elected under Section 3.0408 of this part.

(d) Permanent directors serve staggered four-year terms.

(e) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(f) A director serves until the director's successor has qualified.

SECTION 3.0405. COMPENSATION OF DIRECTORS. A director is not entitled to fees of office but is entitled to reimbursement of actual expenses reasonably and necessarily incurred while engaging in activities on behalf of the district.

SECTION 3.0406. METHOD OF ELECTING DIRECTORS: COMMISSIONERS PRECINCTS. (a) The directors of the district shall be elected according to the commissioners precinct method as provided by this section.

(b) One director shall be elected by the voters of the entire district, and one director shall be elected from each county commissioners precinct by the voters of that precinct.

(c) To be eligible to be a candidate for or to serve as director at large, a person must be a registered voter in the district. To be eligible to be a candidate for or to serve as director from a county commissioners precinct, a person must be a registered voter of that precinct.

(d) A person shall indicate on the application for a place on the ballot:

(1) the precinct that the person seeks to represent; or

(2) that the person seeks to represent the district at large.

(e) When the boundaries of the commissioners precincts are changed, each director in office on the effective date of the change or elected to a term of office beginning on or after the effective date of the change serves in the precinct to which the director was elected for the entire term to which the director was elected, even though the change in boundaries places the person's residence outside the precinct for which the person was elected.

SECTION 3.0407. CONFIRMATION AND INITIAL DIRECTORS ELECTION.

(a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect initial directors.

(b) At the confirmation and initial directors election, the temporary board of directors shall have placed on the ballot the name of any candidate filing for an initial director position and blank spaces to write in the names of other persons. A temporary director who is eligible to be a candidate under Section 3.0406 of this part may file for an initial director position.

(c) Section 41.001(a), Election Code, does not apply to a confirmation and initial directors election held as provided by this section.

(d) Except as provided by this section, a confirmation and initial directors election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

**SECTION 3.0408. ELECTION OF DIRECTORS.** (a) On the first Saturday in May of the first even-numbered year after the year in which the district is authorized to be created at a confirmation election, an election shall be held in the district for the election of three directors to serve four-year terms and two directors to serve two-year terms.

(b) On the first Saturday in May of each subsequent second year following the election, the appropriate number of directors shall be elected.

**SECTION 3.0409. LIMITATION ON TAXATION.** The district may levy property taxes at a rate not to exceed 20 cents on each \$100 of assessed valuation to pay any part of the bonds or notes issued by the district if the authority to impose property taxes under this part is approved by a majority of the voters voting at a confirmation election under Section 3.0407 of this part or at a separate election called for that purpose by the board of directors.

**SECTION 3.0410. EXPIRATION.** If the creation of the district is not confirmed at a confirmation election held under Section 3.0407 of this part before September 1, 2003, the district is dissolved and this part expires on that date.

#### PART 5. LOST PINES GROUNDWATER CONSERVATION DISTRICT

**SECTION 3.0501. RATIFICATION OF CREATION.** The creation of the Lost Pines Groundwater Conservation District in Bastrop and Lee counties by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.0507 of this part.

**SECTION 3.0502. DEFINITIONS.** In this part:

(1) "District" means the Lost Pines Groundwater Conservation District.

(2) "Public utility" means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision, or agency operating, maintaining, or controlling facilities in the state for providing potable water service for compensation.

**SECTION 3.0503. BOUNDARIES.** The boundaries of the district are coextensive with the boundaries of Bastrop and Lee counties, Texas.

**SECTION 3.0504. POWERS.** (a) The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of the state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law, including Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, that is in conflict or inconsistent with this part.

(b) The district may not impose a tax. The district may assess regulatory pumping fees for water produced in or exported from the district. The regulatory pumping fees the district assesses for water for crop or livestock production or other agricultural uses may not exceed 20 percent of the rate applied to water for municipal uses. Regulatory pumping fees based on the amount of water withdrawn from a well may not exceed:

(1) \$1 per acre-foot for water used for the purpose of irrigating agricultural crops; or

(2) 17 cents per thousand gallons for water used for any other purpose.

(c) The district may adopt a rule exempting a well that is not capable of producing more than 50,000 gallons of groundwater a day from a permit requirement, a fee, or a restriction on production.

**SECTION 3.0505. GROUNDWATER WELLS UNDER JURISDICTION OF RAILROAD COMMISSION.** (a) Groundwater wells drilled or operated within the district under permits issued by the Railroad Commission of Texas are under the exclusive jurisdiction of the railroad commission and are exempt from regulation by the district.

(b) Groundwater produced in an amount authorized by a railroad commission permit may be used within or exported from the district without obtaining a permit from the district.

(c) To the extent groundwater production exceeds railroad commission authorization, the holder of the railroad commission permit must apply to the district for appropriate permits for the excess production and is subject to the applicable regulatory fees.

(d) Groundwater produced from wells under the jurisdiction of the railroad commission is generally exempt from water district fees. However, the district may impose either a pumping fee or an export fee on groundwater produced from an otherwise exempt mine well that is used for municipal purposes or by a public utility. Any fee imposed by the district under this subsection may not exceed the fee imposed on other groundwater producers in the district.

**SECTION 3.0506. BOARD OF DIRECTORS.** (a) The district is governed by a board of 10 directors.

(b) Five directors shall be appointed from Bastrop County by the county judge of Bastrop County and five directors shall be appointed from Lee County by the county judge of Lee County.

(c) Temporary directors serve until their successors are appointed and have qualified.

(d) The temporary directors shall draw lots to determine:

(1) which three directors from each county will serve four-year terms that expire December 31, 2005; and

(2) which two directors from each county will serve two-year terms that expire December 31, 2003.

(e) In each subsequent second year following the initial appointment of directors, the appropriate number of directors shall be appointed.

(f) Except as provided by Subsection (d) of this section, directors serve staggered four-year terms.

(g) Directors may serve consecutive terms.

(h) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(i) A director serves until the director's successor has qualified.

(j) If a vacancy occurs on the board of directors, the board may appoint a director to serve the remainder of the term.

(k) A director may receive fees of office as provided by Section 36.060, Water Code, and is entitled to reimbursement for reasonable actual expenses incurred in performing duties as a director.

**SECTION 3.0507. INITIAL MEETING AND CONFIRMATION ELECTION.**

(a) As soon as practicable after September 1, 2001, the temporary directors shall meet to set the date for and call the confirmation election. The directors shall hold the meeting in conjunction with the regularly scheduled meeting of the directors.

(b) The election shall be held on the authorized election date in November if the United States Department of Justice has precleared this part by that time. If this part has not been precleared by the November election date, the confirmation election shall be held at the next authorized election date. The district shall contract with the county clerks of Bastrop and Lee counties to conduct the election.

(c) Except as provided by this section, the confirmation election must be conducted as provided by Sections 36.017 and 36.018, Water Code, and the Election Code.

(d) If a majority of the votes cast at an election held under this section is against the confirmation of the district, the temporary directors may not call another election under this section before the first anniversary of that election.

**SECTION 3.0508. REGIONAL COOPERATION.** The district shall:

(1) adopt a management plan detailing proposed efforts of the district to cooperate with other groundwater conservation districts;

(2) participate as needed in coordination meetings with adjacent groundwater conservation districts that share one or more aquifers with the district;

(3) coordinate the collection of data with adjacent groundwater conservation districts in such a way as to achieve relative uniformity of data type and quality;

(4) provide groundwater level information to adjacent groundwater conservation districts;

(5) investigate any groundwater pollution to identify the pollution's source;

(6) notify adjacent groundwater conservation districts and all appropriate agencies of any groundwater pollution detected and the source of pollution identified;

(7) provide to adjacent groundwater conservation districts annually an inventory of water wells in the district and an estimate of groundwater production within the district; and

(8) include adjacent groundwater conservation districts on mailing lists for district newsletters and information regarding seminars, public education events, news articles, and field days.

**SECTION 3.0509. EXPIRATION.** If the creation of this district is not confirmed at a confirmation election held under Section 3.0507 of this part before September 1, 2005, this part expires on that date.

**PART 6. MCMULLEN GROUNDWATER  
CONSERVATION DISTRICT**

**SECTION 3.0601. RATIFICATION OF CREATION.** The creation of the McMullen Groundwater Conservation District in McMullen County by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.0607 of this part.

**SECTION 3.0602. DEFINITION.** In this part, "district" means the McMullen Groundwater Conservation District.

**SECTION 3.0603. BOUNDARIES.** The boundaries of the district are coextensive with the boundaries of McMullen County.

**SECTION 3.0604. GENERAL POWERS.** (a) The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of the

state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law, including Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, that is in conflict or inconsistent with this part.

(b) The rights, powers, privileges, authority, functions, and duties of the district are subject to the continuing right of supervision of the state to be exercised by and through the Texas Natural Resource Conservation Commission.

SECTION 3.0605. BOARD OF DIRECTORS. (a) The district is governed by a board of five directors.

(b) Temporary directors serve until initial directors are elected under Section 3.0607 of this part.

(c) Initial directors serve until permanent directors are elected under Section 3.0608 of this part.

(d) Permanent directors serve staggered four-year terms.

(e) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(f) A director serves until the director's successor has qualified.

(g) If there is a vacancy on the board, the remaining directors shall appoint a director to serve the remainder of the term.

SECTION 3.0606. METHOD OF ELECTING DIRECTORS: COMMISSIONERS PRECINCTS. (a) The directors of the district shall be elected according to the commissioners precinct method as provided by this section.

(b) One director shall be elected by the voters of the entire district and one director shall be elected from each county commissioners precinct by the voters of that precinct.

(c) To be qualified as a candidate for or to serve as director at large, a person must be a registered voter in the district. To be a candidate for or to serve as director from a county commissioners precinct, a person must be a registered voter of that precinct.

(d) A person shall indicate on the application for a place on the ballot:

(1) the precinct that the person seeks to represent; or

(2) that the person seeks to represent the district at large.

(e) When the boundaries of the commissioners precincts are changed, each director in office on the effective date of the change or elected to a term of office beginning on or after the effective date of the change serves in the precinct to which the director was elected for the entire term to which the director was elected, even though the change in boundaries places the person's residence outside the precinct for which the person was elected.

SECTION 3.0607. CONFIRMATION AND INITIAL DIRECTORS ELECTION.

(a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect initial directors.

(b) At the confirmation and initial directors election, the temporary board of directors shall have placed on the ballot the names of the persons serving as temporary directors who intend to run for an initial director position and are qualified to be a candidate under Section 3.0606 of this part together with the name of any candidate filing for an initial director position and blank spaces to write in the names of other persons.

(c) If the district is created at the election, the temporary board of directors, at the time the vote is canvassed, shall:

(1) declare the qualified person who receives the most votes for each position to be elected as the initial director for that position; and

(2) include the results of the initial directors election in the district's election report to the Texas Natural Resource Conservation Commission.

(d) Section 41.001(a), Election Code, does not apply to a confirmation and initial directors election held as provided by this section.

(e) Except as provided by this section, a confirmation and initial directors election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

(f) If a majority of the votes cast at an election held under this section is against the confirmation of the district, the temporary directors may not call another election under this section before the first anniversary of that election.

**SECTION 3.0608. ELECTION OF PERMANENT DIRECTORS.** (a) On the first Saturday in October of the second year after the year in which the district is authorized to be created at a confirmation election, an election shall be held in the district for the election of directors from county commissioners precincts one and three, each of whom serves a two-year term, and directors from county commissioners precincts two and four and the director at large, each of whom serves a four-year term.

(b) On the first Saturday in October of each subsequent second year following the election, the appropriate number of directors shall be elected to the board, each of whom serves a four-year term.

**SECTION 3.0609. LIMITATION ON TAXATION.** The district may not impose an ad valorem tax at a rate that exceeds five cents on the \$100 valuation of taxable property in the district.

**SECTION 3.0610. EXPIRATION.** If the creation of the district is not confirmed at a confirmation election held under Section 3.0607 of this part before September 1, 2003, this part expires on that date.

#### **PART 7. MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT**

**SECTION 3.0701. RATIFICATION OF CREATION.** The creation of the Middle Pecos Groundwater Conservation District in Pecos County by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.0707 of this part.

**SECTION 3.0702. DEFINITION.** In this part, "district" means the Middle Pecos Groundwater Conservation District.

**SECTION 3.0703. BOUNDARIES.** The boundaries of the district are coextensive with the boundaries of Pecos County.

**SECTION 3.0704. GENERAL POWERS.** (a) The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law, including Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, that is in conflict or inconsistent with this part.

(b) The rights, powers, privileges, authority, functions, and duties of the district are not subject to the continuing right of supervision of the state through the Texas Natural Resource Conservation Commission.

SECTION 3.0705. BOARD OF DIRECTORS. (a) The district is governed by a board of 11 directors.

(b) Temporary directors serve until initial directors are elected under Section 3.0707 of this part.

(c) Initial directors serve until permanent directors are elected under Section 3.0708 of this part.

(d) Permanent directors serve staggered four-year terms.

(e) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(f) A director serves until the director's successor has qualified.

(g) If there is a vacancy on the board, the remaining directors shall appoint a director to serve the remainder of the term. If at any time there are fewer than three qualified directors, the Pecos County Commissioners Court shall appoint the necessary number of persons to fill all the vacancies on the board.

(h) A director may not receive a salary or other compensation for service as a director but may be reimbursed for actual expenses of attending meetings at the rate in effect for employees of Pecos County.

SECTION 3.0706. METHOD OF ELECTING DIRECTORS: COMMISSIONERS PRECINCTS. (a) The directors of the district shall be elected according to the method provided by this section.

(b) One director shall be elected by the qualified voters of the entire district, two directors shall be elected from each county commissioners precinct by the qualified voters of that precinct, one director shall be elected from the city of Iraan by the qualified voters of that city, and one director shall be elected from the city of Fort Stockton by the qualified voters of that city.

(c) To be qualified to be a candidate for or to serve as a director at large, a person must be a registered voter in the district. To be a candidate for or to serve as director from a county commissioners precinct or a city, a person must be a registered voter of that precinct or city, as applicable.

(d) A person shall indicate on the application for a place on the ballot:

(1) the precinct or city that the person seeks to represent; or

(2) that the person seeks to represent the district at large.

(e) When the boundaries of the commissioners precincts are changed, each director in office on the effective date of the change or elected to a term of office beginning on or after the effective date of the change serves in the precinct to which the director was elected for the entire term to which the director was elected, even though the change in boundaries places the person's residence outside the precinct for which the person was elected.

SECTION 3.0707. CONFIRMATION AND INITIAL DIRECTORS ELECTION.

(a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect initial directors.

(b) At the confirmation and initial directors election, the temporary board of directors shall have placed on the ballot the name of any candidate filing for an initial director position and blank spaces to write in the names of other persons. A temporary director who is qualified to be a candidate under Sections 3.0705 and 3.0706 of this part may file for an initial director position.

(c) Section 41.001(a), Election Code, does not apply to a confirmation and initial directors election held as provided by this section.

(d) Except as provided by this section, a confirmation and initial directors election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

(e) The elected initial directors shall draw lots to determine their terms. One director from each county commissioners precinct and the director from the district at large serve terms that expire on the date of the first election held under Section 3.0708 of this part. The remaining directors serve terms that expire on the date of the second election held under Section 3.0708 of this part.

(f) If the majority of the votes cast at an election held under this section is against the confirmation of the district, the temporary directors may call another election under this section to be held not later than August 31, 2003.

**SECTION 3.0708. ELECTION OF DIRECTORS.** On the first Saturday in May of the first even-numbered year after the year in which the district is authorized to be created at a confirmation election and on the first Saturday in May of each subsequent second year, an election shall be held in the district to elect the appropriate number of directors.

**SECTION 3.0709. EXPIRATION.** If the creation of the district is not confirmed at a confirmation election held under Section 3.0707 of this part before September 1, 2003, the district is dissolved and this part expires on that date.

#### **PART 8. RED SANDS GROUNDWATER CONSERVATION DISTRICT**

**SECTION 3.0801. RATIFICATION OF CREATION.** The creation of the Red Sands Groundwater Conservation District in Hidalgo County by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.0808 of this part.

**SECTION 3.0802. DEFINITION.** In this part, "district" means the Red Sands Groundwater Conservation District.

**SECTION 3.0803. BOUNDARIES.** The district includes all of the territory contained in the following described area:

A 19,232 acre tract more or less out of San Salvador Del Tule Grant as recorded in Volume 10, Page 58 of the Hidalgo County, Texas map records and out of the Santa Anita Grant as recorded in Volume 7, Page 38 of the Hidalgo County, Texas map records.

Commencing at the Southeast Corner of this here in described boundary tract, said point being the intersection of the centerline of U.S. Highway 281 and the centerline of Farm to Market Road number 490 (F.M. 490) (West Hargill Road) as shown in the map of San Salvador Del Tule Grant as recorded in Volume 10, Page 58 of the Hidalgo County map records. Said point is also the point of beginning.

Thence, Westerly along the center line of the F.M. 490, an approximate distance of 18,400 feet to a point on the West line of San Salvador Del Tule Grant, said point also being the intersection of the centerline of F.M. 490 and the West line of the San Salvador Del Tule Grant,

Thence, Northerly along the West line of the San Salvador Del Tule Grant and the East line of the Santa Anita Grant at an approximate distance of 21,300 feet to a point, said point being an inside corner of this herein described tract, and also being the Southeast corner of Redland Vineyards Subdivision as recorded in Volume 4, Page 51 of the Hidalgo County map records,

Thence, Westerly along the South line of the Redland Vineyards Subdivision, an approximate distance of 4,238 feet to a point, said point being an outside corner of this herein described tract, said point also being the Southwest corner of the Redland Vineyard Subdivision,

Thence, Northerly with the West line of Redland Vineyards Subdivision, at approximately 4,590.50 feet past a point, said point being the Northwest corner of Redland Vineyard Subdivision, and the Southwest corner of Delbridge Subdivision as recorded in Volume 5, Page 11, Hidalgo County map records, and continuing Northerly along the West line of Delbridge Subdivision for an approximate total distance of 6,646 feet to a point, said point being an inside corner of this herein described tract, and also being the Northwest corner of Delbridge Subdivision,

Thence, Westerly along the South line of a 196.37 acres tract, known as the A.B. De Kock Tract, an approximate distance of 3,500 feet past the Southeast corner of share 4, out of the 8,374.70 acre tract partition out of the Santa Anita Grant as recorded in Volume 7, Page 38, in the Hidalgo County map records and continuing Westerly for an approximate total distance of 6,500 feet to a point, said point being an outside corner of this herein described tract and also being the Southwest corner of share 4,

Thence, Northerly along the West line of share 4, an approximate total distance of 19,143 feet to a point, said point being the Northwest corner of this herein described tracts and, the intersection of the West line of share 4 and the centerline of Farm to Market Road number 1017, (F.M. 1017)

Thence, in a Southeasterly direction, with the Right-of-Way centerline of Farm to Market Road number 1017 (F.M. 1017) an approximate total distance of 27,800 feet to a point, said point being the Northeast corner of this herein described tract, and also being the intersection of the centerline of F.M. 1017 Right-of-Way and the center line of the U.S. Highway 281 Right-Of-Way,

Thence, in a Southerly direction, with the centerline of U.S. Highway 281 Right-Of-Way, an approximate distance of 7,500 feet past Floral Road, and at approximate 21,700 feet past Red Gate Road and at approximate 29,700 feet past Laguna Seca Road and for an approximate total distance of 39,300 feet to the point of beginning of this here in described tract, said tract contains 19,232 Acres, More or Less.

**SECTION 3.0804. FINDINGS RELATIVE TO BOUNDARIES.** The legislature finds that the boundaries and field notes of the district form a closure. A mistake in the field notes or in the copying of the field notes in the legislative process does not affect the organization, existence, or validity of the district, the right of the district to levy and collect taxes, or the legality or operation of the district or its governing body.

**SECTION 3.0805. GENERAL POWERS.** (a) Except as provided by this part, the district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of the state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law, including Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, that is in conflict or inconsistent with this part.

(b) The rights, powers, privileges, authority, functions, and duties of the district are subject to the continuing right of supervision of the state, to be exercised by and through the Texas Natural Resource Conservation Commission.

**SECTION 3.0806. BOARD OF DIRECTORS.** (a) The district is governed by a board of five directors, each elected at large to one of five numbered places.

(b) To be eligible to serve as a director, an individual must reside in the district.

(c) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(d) Permanent directors serve staggered three-year terms.

(e) A director serves until the director's successor has qualified.

(f) A vacancy in the office of director shall be filled by appointment of the board of directors until the next election of directors, at which election a person shall be elected to fill the position. If the position is not scheduled to be filled at the election, the person elected to fill the position serves only the remainder of the unexpired term.

(g) An appointed director who is qualified to serve as a director under Subsection (b) of this section is eligible to run for election to the board of directors.

**SECTION 3.0807. TEMPORARY DIRECTORS.** (a) The temporary board of directors is composed of:

- (1) Lucas Hinojosa;
- (2) Becky Guerra;
- (3) Arcadio Guerra;
- (4) Elizabeth Ann Sweet; and
- (5) John Cozad.

(b) The temporary directors are not required to meet the eligibility requirements of permanent directors.

(c) Temporary directors serve until permanent directors are elected at the confirmation election under Section 3.0808 of this part.

**SECTION 3.0808. CONFIRMATION AND INITIAL DIRECTORS ELECTION.**

(a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect initial directors.

(b) At the confirmation and initial directors election, the temporary board of directors shall have placed on the ballot the names of the candidates for each of the five numbered positions and blank spaces to write in the names of other persons. Names on the ballot may include persons serving as temporary directors who intend to run for an initial director position together with the name of any candidate filing for an initial director position.

(c) If a majority of the votes cast at the election are in favor of the creation of the district, the temporary board of directors shall declare the district created. If a majority of the votes cast at the election are against the creation of the district, the temporary board of directors shall declare the district defeated. The temporary board of directors shall file a copy of the election results with the Texas Natural Resource Conservation Commission.

(d) If a majority of the votes cast at the election are against the creation of the district, the temporary board of directors may not call another election under this section before the first anniversary of the date of the election.

(e) If the creation of the district is confirmed at the election, the temporary board of directors, at the time the vote is canvassed, shall:

(1) declare the qualified person who receives the most votes for each position to be elected as the initial director for that position; and

(2) include the results of the initial directors election in the district's election report to the Texas Natural Resource Conservation Commission.

(f) The initial directors shall draw lots to determine their terms so that:

(1) one director serves a one-year term that expires on the anniversary of the date the initial directors were elected;

(2) two directors serve two-year terms that expire on the anniversary of the date the initial directors were elected; and

(3) two directors serve three-year terms that expire on the anniversary of the date the initial directors were elected.

(g) Section 41.001(a), Election Code, does not apply to a confirmation and initial directors election held as provided by this section.

(h) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

**SECTION 3.0809. ELECTION OF PERMANENT DIRECTORS.** Beginning in the first year after the year in which the district is authorized to be created at a confirmation election, the board of directors shall call an election to be held in the district on the first Saturday of the month in which the initial directors were elected under Section 3.0808 of this part and every year after that date to elect the appropriate number of directors to the board.

**SECTION 3.0810. ELIGIBLE DISTRICT VOTERS.** Any person qualified to vote under the Election Code who resides in the district is eligible to vote in district elections.

**SECTION 3.0811. TAXATION AUTHORITY.** (a) The board of directors shall impose taxes in accordance with Subchapter G, Chapter 36, Water Code.

(b) Notwithstanding Section 36.201, Water Code, the board of directors may annually impose an ad valorem tax at a rate not to exceed two cents on each \$100 of assessed valuation unless a higher rate is approved by a majority of the voters of the district voting at an election called and held for that purpose.

**SECTION 3.0812. TRANSPORTATION OF GROUNDWATER.** (a) The board of directors may adopt rules under Section 36.122, Water Code, requiring a permit to transport district groundwater outside the district. The board of directors shall authorize the transportation of groundwater for use outside the district if the board determines that the use is in the public interest. The board of directors may:

(1) designate uses of water that are in the public interest; and

(2) establish criteria for permits issued under the rules.

(b) Transportation projects for the use of groundwater outside the district that began before September 1, 2001, may continue without a permit if the use of groundwater is on land contiguous to the district's boundaries and is for domestic or livestock purposes.

**SECTION 3.0813. EXPIRATION.** If the creation of the district is not confirmed at a confirmation election held under Section 3.0808 of this part before September 1, 2003, this part expires on that date.

#### **PART 9. REFUGIO GROUNDWATER CONSERVATION DISTRICT**

**SECTION 3.0901. RATIFICATION OF CREATION.** The creation of the Refugio Groundwater Conservation District in Refugio County by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.0907 of this part.

**SECTION 3.0902. DEFINITION.** In this part, "district" means the Refugio Groundwater Conservation District.

**SECTION 3.0903. BOUNDARIES.** The boundaries of the district are coextensive with the boundaries of Refugio County.

SECTION 3.0904. GENERAL POWERS. The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law, including Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, that is in conflict or inconsistent with this part.

SECTION 3.0905. BOARD OF DIRECTORS. (a) The district is governed by a board of five directors.

(b) Temporary directors serve until initial directors are elected under Section 3.0907 of this part.

(c) Initial directors serve until permanent directors are elected under Section 3.0908 of this part.

(d) Permanent directors serve staggered four-year terms.

(e) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(f) A director serves until the director's successor has qualified.

(g) If a director fails to qualify for office or if there is at any time a vacancy on the temporary board of directors, the commissioners court shall appoint a person to fill the vacancy.

SECTION 3.0906. METHOD OF ELECTING DIRECTORS: COMMISSIONERS PRECINCTS. (a) The directors of the district shall be elected according to the commissioners precinct method as provided by this section.

(b) One director shall be elected by the qualified voters of the entire district, and one director shall be elected from each county commissioners precinct by the qualified voters of that precinct.

(c) To be qualified to be a candidate for or to serve as director at large, a person must be a registered voter in the district. To be a candidate for or to serve as director from a county commissioners precinct, a person must be a registered voter of that precinct.

(d) A person shall indicate on the application for a place on the ballot:

(1) the precinct that the person seeks to represent; or

(2) that the person seeks to represent the district at large.

(e) When the boundaries of the commissioners precincts are changed, each director in office on the effective date of the change or elected to a term of office beginning on or after the effective date of the change serves in the precinct to which the director was elected for the entire term to which the director was elected, even though the change in boundaries places the person's residence outside the precinct for which the person was elected.

SECTION 3.0907. CONFIRMATION AND INITIAL DIRECTORS ELECTION.

(a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect initial directors.

(b) At the confirmation and initial directors election, the temporary board of directors shall have placed on the ballot the name of any candidate filing for an initial director position and blank spaces to write in the names of other persons. A temporary director who is qualified to be a candidate under Sections 3.0905 and 3.0906 of this part may file for an initial director position.

(c) Section 41.001(a), Election Code, does not apply to a confirmation and initial directors election held as provided by this section.

(d) Except as provided by this section, a confirmation and initial directors election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

SECTION 3.0908. ELECTION OF DIRECTORS. (a) On the first Saturday in May of the first even-numbered year after the year in which the district is authorized to be created at a confirmation election, an election shall be held in the district for the election of three directors to serve four-year terms and two directors to serve two-year terms.

(b) On the first Saturday in May of each subsequent second year following the election, the appropriate number of directors shall be elected.

SECTION 3.0909. EXPIRATION. If the creation of the district is not confirmed at a confirmation election held under Section 3.0907 of this part before September 1, 2003, the district is dissolved and this part expires on that date.

#### PART 10. SOUTHEAST TRINITY GROUNDWATER CONSERVATION DISTRICT

SECTION 3.1001. PURPOSE. The purpose of this part is to ratify the Southeast Trinity Groundwater Conservation District, a locally controlled groundwater district, to protect, recharge, and prevent the waste of groundwater and to control subsidence of water from the groundwater reservoirs.

SECTION 3.1002. RATIFICATION OF CREATION. The creation of the Southeast Trinity Groundwater Conservation District by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that Act, subject to a confirmation election under Section 3.1008 of this part.

SECTION 3.1003. DEFINITIONS. In this part:

- (1) "Board" means the board of directors of the district.
- (2) "Commission" means the Texas Natural Resource Conservation Commission.
- (3) "District" means the Southeast Trinity Groundwater Conservation District.

SECTION 3.1004. BOUNDARIES. The boundaries of the district are as follows:

BEGINNING at the point of intersection of the Bexar County - Comal County - Kendall County line:

THENCE following the meanders of the Cibolo Creek, the Bexar County - Comal County line in an Easterly direction to the point of intersection with latitude 29° 40':

THENCE along 29° 40' in a Southeasterly direction to the point of intersection with Farm to Market Road 3009:

THENCE with the centerline of Farm to Market Road 3009 in a Southerly direction to the point of intersection with the centerline of Schoenthal Road:

THENCE with the centerline of Schoenthal Road in a Northeasterly direction to the point of intersection with the centerline of Farm to Market Road 1863:

THENCE with the centerline of Farm to Market Road 1863 in an Easterly direction to the point of intersection with the centerline of Mission Valley Road:

THENCE with the centerline of Mission Valley Road in a Northeasterly direction to the point of intersection with the centerline of State Highway 46;

THENCE with the centerline of State Highway 46 in a Northwesterly direction to the point of intersection with the centerline of Hueco Springs Loop Road:

THENCE with the centerline of Hueco Springs Loop Road in a Northeasterly then Easterly direction to the point of intersection with the centerline of River Road:

THENCE with the centerline of River Road in a Northeasterly direction to the point of intersection with the Guadalupe River at the First Crossing:

THENCE following the meanders of the Guadalupe River in a Northerly direction to the point of intersection of the centerlines of the Guadalupe River and Deep Creek:

[Note: the next four paragraphs coincide with the Southern boundary of Comal County Voters Precinct 18]

THENCE along the meanders of Deep Creek in a Northeasterly direction to the point of intersection of the centerline of Deep Creek and the South line of the G. F. Lawrence Survey No. 33, Abstract No. 358:

THENCE with the South line of the G. F. Lawrence Survey No. 33, Abstract No. 358 in a Northeasterly, Southeasterly, and Northeasterly direction to the point of intersection of the South centerline of Farm to Market Road 306 being at approximately Engineers Station 397+98.3:

THENCE with the centerline of Farm to Market Road 306 in a Southeasterly direction to the point of intersection of the centerlines of Farm to Market Road 306 and the William Pfeuffer private ranch road:

THENCE with the approximate bearing N 69° E and approximate distance 5,000 feet to an angle point in the Comal County - Hays County Line:

THENCE with the Comal County - Hays County line in a Northwesterly direction to the point of intersection of the Comal County - Hays County line with the Comal County - Blanco County line:

THENCE with the Comal County - Blanco County line in a Southwesterly direction to the point of intersection of the Comal County - Blanco County - Kendall County line, continuing with the Comal County - Kendall County line in a Southwesterly direction to point of intersection of the Kendall County - Comal County - Bexar County line being the Point of Beginning.

SECTION 3.1005. FINDINGS RELATIVE TO BOUNDARIES. The legislature finds that the boundaries and field notes of the district form a closure. A mistake in the field notes or in copying the field notes in the legislative process does not affect the organization, existence, or validity of the district, the right of the district to levy and collect taxes, or the legality or operation of the district or its governing body.

SECTION 3.1006. AUTHORITY OF DISTRICT. (a) Except as provided by this section or otherwise by this part, the district has the same permitting and general management powers as those granted under Chapter 36, Water Code.

(b) The district has no regulatory jurisdiction over the Edwards Aquifer or any surface water supply.

(c) The board by rule may impose reasonable fees, including fees for groundwater transported out of the district, on each groundwater well in the district that is not exempt from regulation by the district, based on the amount of water withdrawn from the well. The fees may be assessed annually, based on the size of column pipe used in the wells, pump capacity, or actual, authorized, or anticipated pumpage, to pay the maintenance and operating expenses of the district's regulation of groundwater.

(d) Section 36.205(c), Water Code, does not apply to the district.

(e) The district may assess an ad valorem property tax not to exceed seven cents per \$100 valuation for administrative, operation, and maintenance expenses if approved by a majority of the qualified voters voting in an election authorizing the tax.

(f) Any district conservation fee paid by a retail public utility to the district shall be:

(1) collected by the retail public utility directly as a regulatory fee from the customers of the utility and paid to the district; and

(2) shown as a separate line item on the customer's bill.

(g) Fees may not be assessed for groundwater withdrawn from the Edwards Aquifer.

(h) The district shall determine which classes of wells are exempt from permitting requirements.

(i) The district may not require a permit for:

(1) the drilling of or producing from a well either drilled, completed, or equipped so that it is capable of producing less than 10,000 gallons of water per day; or

(2) the drilling of or alteration of the size of a well or to restrict the production of a well if the water produced or to be produced from the well is or will be used to supply the domestic needs of five or fewer households in which a person who is a member of each household is either the owner of the well, a person related to the owner or to a member of the owner's household within the second degree by consanguinity, or an employee of the owner.

(j) The district may construct according to, implement, and maintain best management practices in the district and may engage in and promote acceptance of best management practices through education efforts sponsored by the district for the purposes of water quality and water availability practices such as brush management, recharge enhancement, water and silt detention and retention structures, plugging of abandoned wells, and other treatment measures for the conservation of groundwater resources.

**SECTION 3.1007. BOARD OF DIRECTORS.** (a) The district is governed by a board of five directors.

(b) Temporary directors have been appointed by Comal County Commissioners Court and shall serve until initial directors are elected under Section 3.1008 of this part.

(c) The temporary directors are:

- (1) Cal Perrine;
- (2) Ernest T. Lee;
- (3) Jill Sondeen;
- (4) Larry Hull; and
- (5) Stovy Bowlin.

(d) Initial directors shall be elected at a confirmation election and serve until permanent directors are elected under Section 3.1009 of this part.

(e) Permanent directors serve staggered four-year terms.

(f) The directors shall be elected from four precincts, and one director will represent the district at large. No more than two precincts may be in a single municipality.

(g) A member of the board must reside in and be a registered voter in the precinct from which the person is elected or appointed if representing a precinct or must reside and be registered to vote in the district if representing the district at large.

(h) Directors may serve consecutive terms.

(i) In an election for board members, a write-in vote may not be counted unless the name written in appears on the list of write-in candidates. A declaration of write-in candidacy must be filed not later than 5 p.m. of the 45th day before election day.

(j) Vacancies in the office of director are filled by appointment of the board. If the vacant office is not scheduled for election within the next two years at the time of the appointment, the board shall order an election for the unexpired term to be held as part of the next regularly scheduled directors election. The appointed director's term ends on qualification of the director elected at that election.

(k) The district may not issue bonds before September 1, 2004.

**SECTION 3.1008. CONFIRMATION ELECTION AND ELECTION OF INITIAL DIRECTORS.** (a) As soon as practicable after September 1, 2001, the temporary board of directors may set the date for, call, and hold an election:

- (1) to confirm establishment of the district;
- (2) to elect five initial directors; and
- (3) to authorize the district to impose a tax.

(b) The election may be held on the first authorized election date after the United States Department of Justice has precleared this part. The district shall contract with the county clerk of Comal County to conduct the election.

(c) The elected initial directors shall draw lots to determine their terms so that:

(1) two of the initial directors serve two-year terms that expire on the uniform election date in November of the second year after the date the initial directors were elected; and

(2) the remaining three initial directors serve four-year terms that expire on the uniform election date in November of the fourth year after the year in which the initial directors were elected.

(d) Section 41.001(a), Election Code, does not apply to a confirmation and directors election held as provided by this section.

(e) Except as provided by this section, a confirmation and directors election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

(f) The Comal County Commissioners Court shall pay the expenses of conducting the confirmation and initial directors election, subject to reimbursement from the district if the establishment of the district is confirmed or from available revenues, including funds allocated under Section 36.160, Water Code, if the establishment of the district is defeated.

(g) If the district is defeated, the temporary directors may call and hold subsequent elections to confirm establishment of the district. A subsequent election may not be held earlier than the first anniversary of the date on which the previous election was held. If the district has not been confirmed at an election held under this section before the fourth anniversary of the effective date of this part, the district is dissolved on that date, except that any debts incurred shall be paid and the organization of the district shall be maintained until all debts are paid.

**SECTION 3.1009. ELECTION OF PERMANENT DIRECTORS.** (a) On the uniform election date in November of the second year after the year in which initial directors are elected, an election shall be held in the district to elect two permanent directors for the positions of the two initial directors serving two-year terms.

(b) On the uniform election date in November of each subsequent second year following the election held under Subsection (a) of this section, an election shall be held to elect the appropriate number of permanent directors to the board.

**SECTION 3.1010. COORDINATION WITH OTHER DISTRICTS.** The district may coordinate activities with other groundwater districts that regulate the Trinity Aquifer for the purposes of conjunctively managing the common resource.

SECTION 3.1011. MODIFICATION OF DISTRICT. The district may be modified only under Subchapter J, Chapter 36, Water Code, and by subsequent acts of the legislature.

SECTION 3.1012. STATUTORY INTERPRETATION. Except as otherwise provided by this part, if there is a conflict between this part and Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, this part controls.

#### PART 11. TEXANA GROUNDWATER CONSERVATION DISTRICT

SECTION 3.1101. RATIFICATION OF CREATION. The creation of the Texana Groundwater Conservation District in Jackson County by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.1107 of this part.

SECTION 3.1102. DEFINITION. In this part, "district" means the Texana Groundwater Conservation District.

SECTION 3.1103. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of Jackson County.

SECTION 3.1104. GENERAL POWERS. The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of the state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law, including Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, that is in conflict or inconsistent with this part.

SECTION 3.1105. BOARD OF DIRECTORS. (a) The district is governed by a board of seven directors.

(b) Temporary directors serve until initial directors are elected under Section 3.1107 of this part.

(c) Initial directors serve until permanent directors are elected under Section 3.1108 of this part.

(d) Permanent directors serve staggered four-year terms.

(e) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(f) A director serves until the director's successor has qualified.

(g) If there is a vacancy on the board, the remaining directors shall appoint a director to serve the remainder of the term.

(h) A director may not receive a salary or other compensation for service as a director but may be reimbursed for actual expenses of attending meetings at the rate in effect for employees of Jackson County.

SECTION 3.1106. METHOD OF ELECTING DIRECTORS: COMMISSIONERS PRECINCTS. (a) The directors of the district shall be elected according to the commissioners precinct method as provided by this section.

(b) Three directors shall be elected by the qualified voters of the entire district, and one director shall be elected from each county commissioners precinct by the qualified voters of that precinct.

(c) To be qualified to be a candidate for or to serve as a director at large, a person must be a registered voter in the district. To be a candidate for or to serve as director from a county commissioners precinct, a person must be a registered voter of that precinct.

(d) A person shall indicate on the application for a place on the ballot:

- (1) the precinct that the person seeks to represent; or
- (2) that the person seeks to represent the district at large.

(e) When the boundaries of the commissioners precincts are changed, each director in office on the effective date of the change or elected to a term of office beginning on or after the effective date of the change serves in the precinct to which the director was elected for the entire term to which the director was elected, even though the change in boundaries places the person's residence outside the precinct for which the person was elected.

**SECTION 3.1107. CONFIRMATION AND INITIAL DIRECTORS ELECTION.**

(a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect initial directors.

(b) At the confirmation and initial directors election, the temporary board of directors shall have placed on the ballot the name of any candidate filing for an initial director position and blank spaces to write in the names of other persons. A temporary director who is qualified to be a candidate under Sections 3.1105 and 3.1106 of this part may file for an initial director position.

(c) Section 41.001(a), Election Code, does not apply to a confirmation and initial directors election held as provided by this section.

(d) Except as provided by this section, a confirmation and initial directors election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

(e) If the majority of the votes cast at an election held under this section is against the confirmation of the district, the temporary directors may not call another election under this section before the first anniversary of that election.

**SECTION 3.1108. ELECTION OF DIRECTORS.** (a) On the first Saturday in May of the first even-numbered year after the year in which the district is authorized to be created at a confirmation election, an election shall be held in the district for the election of two directors at large and two directors representing precincts to serve four-year terms and one director at large and two directors representing precincts to serve two-year terms.

(b) On the first Saturday in May of each subsequent second year following the election, the appropriate number of directors shall be elected.

**SECTION 3.1109. LIMITATION ON TAXATION.** The district may not levy or collect an ad valorem tax at a rate that exceeds two cents on each \$100 valuation of taxable property in the district.

**SECTION 3.1110. CONTRACTS WITH GOVERNMENT ENTITIES.** (a) The district may contract with other government entities.

(b) The district may contract with other governmental entities, including river authorities located in the district, for the performance of any or all district functions. A river authority with which the district contracts under this section may perform district functions as provided by the contract.

**PART 12. TRI-COUNTY GROUNDWATER  
CONSERVATION DISTRICT**

**SECTION 3.1201. RATIFICATION OF CREATION.** The creation of the Tri-County Groundwater Conservation District in Foard, Hardeman, and Wilbarger counties by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.1207 of this part.

SECTION 3.1202. DEFINITION. In this part, "district" means the Tri-County Groundwater Conservation District.

SECTION 3.1203. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of Foard, Hardeman, and Wilbarger counties.

SECTION 3.1204. GENERAL POWERS. The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of the state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law, including Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, that is in conflict or inconsistent with this part.

SECTION 3.1205. BOARD OF DIRECTORS. (a) The district is governed by a board of six directors. Two directors are appointed by the commissioners court of each county in the district.

(b) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(c) Directors other than initial directors serve staggered four-year terms.

(d) A director serves until the director's successor has qualified.

(e) If there is a vacancy on the board, the appropriate commissioners court shall appoint a director to serve the remainder of the term.

(f) The appropriate commissioners court shall appoint a director to succeed a director on or before the date the director's term expires.

(g) A director may not receive a salary or other compensation for service as a director but may be reimbursed for actual expenses of attending meetings.

SECTION 3.1206. APPOINTMENT AND TERMS OF INITIAL DIRECTORS.

(a) As soon as practicable after September 1, 2001, the commissioners courts of Foard, Hardeman, and Wilbarger counties shall each appoint two initial directors.

(b) The initial directors serve terms as follows:

(1) the two initial directors appointed by the Foard County Commissioners Court serve terms expiring February 1, 2002;

(2) the two initial directors appointed by the Hardeman County Commissioners Court serve terms expiring February 1, 2004; and

(3) the two initial directors appointed by the Wilbarger County Commissioners Court serve terms expiring February 1, 2006.

SECTION 3.1207. CONFIRMATION ELECTION. (a) The board of directors shall call and hold an election to confirm the establishment of the district.

(b) Section 41.001(a), Election Code, does not apply to a confirmation election held as provided by this section.

(c) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

SECTION 3.1208. TAXING AUTHORITY. The district may levy and collect an ad valorem tax in the district at a rate not to exceed one cent on each \$100 of assessed valuation.

SECTION 3.1209. EXPIRATION. If the creation of the district is not confirmed at a confirmation election held under Section 3.1207 of this part before September 1, 2003, the district is dissolved and this part expires on that date.

#### ARTICLE 4. WATER INFRASTRUCTURE FINANCING

SECTION 4.01. Chapter 15, Water Code, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. WATER INFRASTRUCTURE FUND

Sec. 15.901. DEFINITIONS. In this subchapter:

(1) "Eligible political subdivision" means:

(A) a municipality;

(B) a county; or

(C) an entity created under the authority of Sections 52(b)(1) and (2),

Article III, or Section 59, Article XVI, Texas Constitution.

(2) "Fund" means the water infrastructure fund.

(3) "Metropolitan statistical area" means an area so designated by the United States Office of Management and Budget.

(4) "Political subdivision bonds" means bonds or other obligations issued by a political subdivision to fund a project and purchased by the board from money in the fund.

(5) "Project" means any undertaking or work, including planning and design activities and work to obtain regulatory authority, to conserve, mitigate, convey, and develop water resources of the state, including any undertaking or work done outside the state that the board determines will result in water being available for use in or for the benefit of the state.

Sec. 15.902. FINDINGS. The legislature finds that:

(1) the creation of the fund and the administration of the fund by the board will encourage the conservation and development of the water resources of the state;

(2) the use of the fund is in furtherance of the public purpose of conserving and developing the water resources of the state; and

(3) the use of the fund for the purposes provided by this subchapter is for the benefit of both the state and the political subdivisions to which the board makes financial assistance available in accordance with this subchapter and constitutes a program under, and is in furtherance of the public purposes set forth in, Section 52-a, Article III, Texas Constitution.

Sec. 15.903. WATER INFRASTRUCTURE FUND. (a) The water infrastructure fund is a special account in the general revenue fund to be administered by the board under this subchapter and rules adopted by the board under this subchapter. Money in the fund may be used to pay for the implementation of water projects recommended through the state and regional water planning processes under Sections 16.051 and 16.053.

(b) The fund consists of:

(1) appropriations from the legislature;

(2) any other fees or sources of revenue that the legislature may dedicate for deposit to the fund;

(3) repayments of loans made from the fund;

(4) interest earned on money credited to the fund;

(5) depository interest allocable to the fund in the general revenue fund;

(6) money from gifts, grants, or donations to the fund;

(7) money from revenue bonds or other sources designated by the board; and

(8) proceeds from the sale of political subdivision bonds or obligations held in the fund and not otherwise pledged to the discharge, repayment, or redemption of revenue bonds or other bonds, the proceeds of which were placed in the fund.

Sec. 15.904. USE OF WATER INFRASTRUCTURE FUND. (a) The board may use the fund:

(1) to make loans to political subdivisions at or below market interest rates for projects;

(2) to make grants, low-interest loans, or zero interest loans to political subdivisions for projects to serve areas outside metropolitan statistical areas in order to ensure that the projects are implemented, or for projects to serve economically distressed areas;

(3) to make loans at or below market interest rates for planning and design costs, permitting costs, and other costs associated with state or federal regulatory activities with respect to a project;

(4) as a source of revenue or security for the payment of principal and interest on bonds issued by the board if the proceeds of the sale of the bonds will be deposited in the fund; and

(5) to pay the necessary and reasonable expenses of the board in administering the fund.

(b) Funding under Subsection (a)(2) or under Subsection (a)(3) may not exceed 10 percent of the amount of financial assistance budgeted by the board to be made available from the fund in a fiscal year.

(c) Principal and interest payments on loans made under Subsection (a)(3) may be deferred for a maximum of 10 years or until construction of the project is completed, whichever is earlier.

Sec. 15.905. APPROVAL OF APPLICATIONS. (a) On review and recommendation by the executive administrator, the board by resolution may approve an application if the board finds that:

(1) the application and the assistance applied for meet the requirements of this subchapter and board rules;

(2) the revenue or taxes, or both the revenue and taxes, pledged by the applicant will be sufficient to meet all the obligations assumed by the political subdivision; and

(3) the project will meet water needs in a manner consistent with the state and regional water plans as required by Section 16.053(j), unless otherwise specified by an act of the legislature.

(b) For an application under this subchapter, a program of water conservation through a more effective use of water shall be required in the same manner as for approval of an application for financial assistance under Section 15.106.

(c) The board may deliver funds for the part of a loan or grant for a project relating to surface water development, other than for planning and design costs, permitting costs, and other costs associated with federal and state regulatory activities with respect to a project, only if the executive administrator makes a written finding that the applicant:

(1) has the necessary water rights authorizing the applicant to appropriate and use the water that the project will provide, if the applicant is proposing surface water development; or

(2) has the right to use water that the project will provide, if the applicant is proposing groundwater development.

Sec. 15.906. APPLICABLE LAW. Subchapter E, Chapter 17, applies to financial assistance made available from the fund, except that the board may also execute contracts as necessary to evidence grant agreements.

Sec. 15.907. RULES. The board shall adopt rules necessary to carry out this subchapter, including rules establishing procedures for application for and for the

award of financial assistance, for the investment of funds, and for the administration of the fund.

Sec. 15.908. SALE OF POLITICAL SUBDIVISION BONDS. (a) The board may sell or dispose of political subdivision bonds at the price and under the terms that the board determines to be reasonable.

(b) The board may sell political subdivision bonds without making a previous offer to the political subdivision that issued the bonds and without advertising, soliciting, or receiving bids for sale.

(c) Notwithstanding other provisions of this chapter, the board may sell to the Texas Water Resources Finance Authority any political subdivision bonds purchased with money in the fund and may apply the proceeds of a sale in the manner provided by this section.

(d) Proceeds from the sale of political subdivision bonds under this section shall be deposited in the fund for use as provided by Section 15.904.

(e) As part of a sales agreement with the Texas Water Resources Finance Authority, the board by contract may agree to perform the functions required to ensure that the political subdivision pays the debt service on political subdivision bonds sold and observes the conditions and requirements stated in those bonds.

(f) The board may exercise any powers necessary to carry out the authority granted by this section, including the authority to contract with any person to accomplish the purposes of this section.

SECTION 4.02. Chapter 15, Water Code, is amended by adding Subchapter P to read as follows:

#### SUBCHAPTER P. RURAL WATER ASSISTANCE FUND

Sec. 15.951. PURPOSE. The legislature finds that the rural areas of the state, characterized by small populations extended over disproportionately large service areas, require a means of financing water projects in addition to those established by other provisions of this chapter.

Sec. 15.952. DEFINITIONS. In this subchapter:

(1) "District" means a conservation or reclamation district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(2) "Federal agency" means an agency or other entity of the United States Department of Agriculture or an agency or entity that is acting through or on behalf of that department.

(3) "Fund" means the rural water assistance fund.

(4) "Rural political subdivision" means:

(A) a nonprofit water supply or sewer service corporation, district, or municipality with a service area of 10,000 or less in population or that otherwise qualifies for financing from a federal agency; or

(B) a county in which no urban area exceeds 50,000 in population.

(5) "State agency" means an agency or other entity of the state, including the Department of Agriculture and the Texas Department of Housing and Community Affairs and any agency or authority that is acting through or on behalf of the Department of Agriculture or the Texas Department of Housing and Community Affairs.

Sec. 15.953. FUND. The rural water assistance fund is a special account in the general revenue fund. The fund consists of:

- (1) money directly appropriated to the board;
- (2) repayment of principal and interest from loans made from the fund not otherwise needed as a source of revenue pursuant to Section 17.9615(b);
- (3) money transferred by the board from any sources available; and
- (4) interest earned on the investment of money in the fund and depository interest allocable to the fund in the general revenue fund.

Sec. 15.954. USE OF FUND. The fund may be used:

- (1) to provide low-interest loans to rural political subdivisions for water or water-related projects, including the purchase of well fields, the purchase or lease of rights to produce groundwater, and interim financing of construction projects;
- (2) to enable a rural political subdivision to obtain water supplied by larger political subdivisions or to finance the consolidation or regionalizing of neighboring political subdivisions, or both;
- (3) to contract for an outreach and technical assistance program to assist rural political subdivisions in obtaining assistance through the fund;
- (4) to buy down interest rates on loans; or
- (5) to be used as a source of revenue for the payment of principal and interest on water financial assistance bonds issued by the board if the proceeds of the sale of these bonds will be deposited into the rural water assistance fund.

Sec. 15.955. FINANCIAL ASSISTANCE. (a) The board shall adopt rules necessary to administer this subchapter, including rules establishing procedures for the application for and award of loans, the distribution of loans, the investment of funds, and the administration of loans and the fund.

(b) A rural political subdivision may enter into an agreement with a federal agency or a state agency to submit a joint application for financial assistance under this subchapter.

(c) The board may not release from the fund money for the construction phase of parts of projects proposing surface water or groundwater development until the executive administrator makes a written finding that a rural political subdivision:

- (1) has the necessary water right authorizing it to appropriate and use the water that the project will provide, if the rural political subdivision is proposing surface water development; or
- (2) has the right to use water that the project will provide, if the rural political subdivision is proposing groundwater development.

(d) In passing on an application from a rural political subdivision for financial assistance, the board shall consider:

- (1) the needs of the area to be served by the project, the benefit of the project to the area, the relationship of the project to the overall state water needs, and the relationship of the project to the state water plan; and
- (2) the availability of revenue to the rural political subdivision from all sources for the ultimate repayment of the cost of the water supply project, including all interest.

(e) The board by resolution may approve an application if, after considering the factors listed in Subsection (d) and other relevant factors, the board finds that:

- (1) the public interest is served by state assistance for the project; and
- (2) the revenue or taxes pledged by the rural political subdivision will be sufficient to meet all the obligations assumed by the rural political subdivision during the succeeding period of not more than 50 years.

(f) A program of water conservation for the more efficient use of water shall be required in the same manner as is required for approval of an application for financial assistance under Section 15.106.

(g) Sections 17.183-17.187 apply to the construction of projects funded pursuant to this subchapter.

(h) A nonprofit water supply or sewer service corporation is exempt from payment of any sales tax that may be incurred under other law or ordinance for any project financed by the fund.

SECTION 4.03. Section 5.235(j), Water Code, is amended to read as follows:

(j) The fee for other uses of water not specifically named in this section is \$1 per acre-foot, except that no political subdivision may be required to pay fees to use water for recharge of underground freshwater-bearing sands and aquifers or for abatement of natural pollution. This fee is waived for applications for instream-use water rights deposited into the Texas Water Trust.

SECTION 4.04. Section 15.001, Water Code, is amended by adding Subdivision (12) to read as follows:

(12) "Regionalization" means development of a water supply or wastewater collection and treatment system that incorporates multiple service areas into an areawide service facility or any such system that serves an area that includes more than a single county, city, special district, or other political subdivision of the state.

SECTION 4.05. Section 15.002(a), Water Code, is amended to read as follows:

(a) The legislature finds that it is in the public interest and to the benefit of the general public of the state to encourage and to assist in the planning and construction of projects to develop and conserve the storm water and floodwater as well as the ordinary flows of the rivers and streams of the state, to maintain and enhance the quality of the water of the state, to provide protection to the state's citizens from the floodwater of the rivers and streams of the state, to provide drainage, subsidence control, public beach nourishment, recharge, chloride control, brush control, weather modification, regionalization, and desalination [desalimization], to provide for the management of aquatic vegetation, and other purposes as provided by law or board rule.

SECTION 4.06. Section 15.011(b), Water Code, is amended to read as follows:

(b) After notice and hearing and subject to any limitations established by the General Appropriations Act, the board may transfer money from the fund to the loan fund created under Subchapter C ~~[of this chapter]~~, the storage acquisition fund created under Subchapter E ~~[of this chapter]~~, the research and planning fund created under Subchapter F ~~[of this chapter]~~, the hydrographic survey account created under Subchapter M ~~[of this chapter]~~, provided the hydrographic survey account transfer does not exceed \$425,000, ~~and~~ the aquatic vegetation management fund created under Subchapter N, and the rural water assistance fund created under Subchapter P ~~[of this chapter]~~.

SECTION 4.07. Sections 15.102(a) and (b), Water Code, are amended to read as follows:

(a) The loan fund may be used by the board to provide loans of financial assistance to political subdivisions, federal agencies, or both political subdivisions and federal agencies acting jointly for the construction, acquisition, improvement, or enlargement of projects involving water conservation, water development, or water quality enhancement, providing nonstructural and structural flood control, or

drainage, project recreation lands and revenue-generating recreational improvements within any watershed, or providing recharge, chloride control, subsidence control, brush control, weather modification, regionalization, or desalination [~~desalination~~] as provided by legislative appropriations, this chapter, and the board rules.

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

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

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

SECTION 4.08. Section 15.105, Water Code, is amended to read as follows:

Sec. 15.105. CONSIDERATIONS IN PASSING ON APPLICATION. (a) In passing on an application for financial assistance from the loan fund, the board shall consider but is not limited to:

(1) the needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance in any manner and the benefits of those projects to the other areas;

(2) the availability of revenue to the applicant from all sources for the ultimate repayment of the cost of the project, including all interest;

(3) the relationship of the project to overall statewide needs;

(4) the ability of the applicant to finance the project without state assistance; and

(5) for applications for grants for economically distressed areas, the regulatory efforts by the county in which the project is located to control the construction of subdivisions that lack basic utility services; and

(6) for applications for grants under Section 15.102(b)(2), the ability of the applicant to construct the project without the grant and the benefits of the project to water and wastewater needs of the state.

(b) The board by rule shall further define eligibility for grants under this subchapter.

SECTION 4.09. Section 15.106(a), Water Code, is amended to read as follows:

(a) The board, by resolution, may approve an application for financial assistance [~~a loan~~] if after considering the factors listed in Section 15.105 of this code and any other relevant factors, the board finds:

(1) that the public interest requires state participation in the project; and

(2) that in its opinion the revenue or taxes pledged by the political subdivision will be sufficient to meet all the obligations assumed by the political subdivision.

SECTION 4.10. Section 15.107, Water Code, is amended to read as follows:

Sec. 15.107. METHOD OF MAKING [~~LOANS OF~~] FINANCIAL ASSISTANCE AVAILABLE. (a) The board may make financial assistance available to successful applicants in any manner that it considers economically feasible including:

(1) contracts or agreements with a political subdivision for the payment of the principal of or interest on or both the principal of and interest on bonds or other obligations issued or to be issued by the political subdivision;

(2) contracts or agreements with a political subdivision for the purpose of providing the political subdivision's share of any cost-sharing required as a participant in or local sponsor of any federal project; [~~or~~]

(3) purchase of the bonds or other obligations of a political subdivision for the purpose of completely or partially financing the project for which the application is being submitted; or

(4) contracts or agreements for the receipt of funds and performance of obligations in relation to any grant of funds provided by the board.

(b) Contracts or agreements entered into under Subdivision (1) of Subsection (a) of this section may cover all or any part of the debt service requirements in a given year and may cover debt service requirements in as many years of an issue as the board considers appropriate.

(c) In a determination on a loan for financial assistance, the board may approve interest deferral or the capitalization of interest costs and may approve periods of repayment for the loans of up to 50 years.

SECTION 4.11. Section 15.434, Water Code, is amended to read as follows:

Sec. 15.434. USE OF MONEY IN FUND. Money deposited to the credit of the agricultural soil and water conservation fund, on appropriation by the legislature to the board, the Department of Agriculture, the State Soil and Water Conservation Board, the Texas Agricultural Experiment Station, the Texas Agricultural Extension Service, public colleges and universities, and other state agencies shall be used for the following purposes:

(1) agricultural water conservation technical assistance programs;

(2) agricultural water conservation, education, and demonstration programs;

(3) purchase of equipment, including demonstration and educational equipment;

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

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

(6) desalination [~~desalination~~];

(7) weather modification;

(8) technical assistance programs for developing on-farm soil and water conservation plans developed jointly by landowners and operators and local soil and water conservation districts, as provided by Subchapter H, Chapter 201, Agriculture Code;

(9) research and demonstration relating to the production of native and low-water-use plants and water-efficient crops;

(10) a pilot program for low-interest loans for the purchase of agricultural water conservation systems established by Subchapter I of this chapter; ~~and~~

(11) research, demonstration, and education relating to brush control; and

(12) regionalization designed to promote agricultural water conservation.

SECTION 4.12. Section 15.471, Water Code, is amended to read as follows:

Sec. 15.471. GRANTS; PURPOSES. The board may make grants of money to groundwater [~~underground water~~] conservation districts, to political subdivisions, and to other districts created under Article III, Sections 52(b)(1) and (2), or Article XVI, Section 59, of the Texas Constitution for purchasing equipment required for:

(1) measurement and evaluation of irrigation systems and agricultural water conservation practices on irrigated land, dryland, and rangeland;

(2) demonstration of efficient irrigation systems and agricultural water conservation practices on irrigated land, dryland, and rangeland;

(3) testing and evaluation of water quality and the suitability of water from groundwater or surface water resources for irrigation, rural domestic use, livestock, or agricultural industry use;

(4) demonstration of efficient or sound chemical application and evaluation or demonstration of systems which will prevent contamination of groundwater and surface water from chemicals and other substances used in agriculture; or

(5) measurement and data collection related to the conservation of groundwater resources.

SECTION 4.13. Section 15.602, Water Code, is amended by adding a new Subdivision (8) and redesignating existing Subdivisions (8) through (14) to read as follows:

(8) "Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state or any interstate body, as defined by Section 502 of the federal act, including a political subdivision as defined by this subchapter, if the person is eligible for financial assistance under federal law establishing the revolving fund.

(9) "Political subdivision" means a municipality, intermunicipal, interstate, or state agency, any other public entity eligible for assistance under this subchapter, or a nonprofit water supply corporation created and operating under Chapter 67, if such entity is eligible for financial assistance under federal law establishing the state revolving fund or an additional state revolving fund.

(10) ~~(9)~~ "Public water system" means a system that is owned by any person and that meets the definition of public water system in the Safe Drinking Water Act.

(11) ~~(10)~~ "Public works" means any project to acquire, construct, improve, repair, or otherwise provide any buildings, structures, facilities, equipment, or other real or personal property or improvements designed for public use, protection, or enjoyment undertaken by a political subdivision and paid for, in whole or in part, out of public funds.

(12) ~~(11)~~ "Revolving fund" means the state water pollution control revolving fund.

(13) ~~(12)~~ "Safe Drinking Water Act" means Title XIV of the federal Public Health Service Act, commonly known as the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f et seq.).

(14) ~~(13)~~ "Safe drinking water revolving fund" means the fund established by the board as an additional state revolving fund to provide financial assistance in accordance with the federal program established pursuant to the provisions of the Safe Drinking Water Act.

(15) ~~(14)~~ "Treatment works" has the meaning established by the federal act and the eligible components of the management programs established by Sections 319 and 320 of the federal act.

SECTION 4.14. Section 15.603(a), Water Code, is amended to read as follows:

(a) The revolving fund is held separately from other funds by the board outside the State Treasury to provide financial assistance to political subdivisions for construction of treatment works and to persons for nonpoint source pollution control and estuary management projects.

SECTION 4.15. Section 15.604(a), Water Code, is amended to read as follows:

(a) The board may use the revolving fund for financial assistance only as provided by the federal act:

- (1) to make loans, on the conditions that:
  - (A) those loans are made at or below market interest rates, including interest-free loans, at terms not to exceed 20 years;
  - (B) principal and interest payments will begin not later than one year after completion of any treatment works and all loans will be fully amortized not later than 20 years after completion of the treatment works;
  - (C) the recipient of a loan will establish a dedicated source of revenue for repayment of loans; and
  - (D) the revolving fund will be credited with all payments of principal of and interest on all loans;
- (2) to buy or refinance the debt obligation of political subdivisions at or below market rates if the debt obligations were incurred after March 7, 1985;
- (3) to guarantee or purchase insurance for political subdivisions if the guarantee or insurance would improve access to market credit or reduce interest rates;
- (4) as a source of revenue or security for the payment of principal and interest on bonds issued by the state if the proceeds of the sale of those bonds will be deposited in the revolving fund;
- (5) to provide loan guarantees to similar revolving funds established by municipalities or intermunicipal agencies;
- (6) to earn interest on revolving fund accounts;
- (7) for the reasonable costs of administering the revolving fund and conducting activities provided for by Title VI of the federal act, except that those amounts may not exceed the amount authorized under Title VI of the federal act; ~~and~~
- (8) to provide financial assistance to persons for a nonpoint source pollution control project under Section 319 of the federal act or for an estuary management project under Section 320 of the federal act; and
- (9) for other purposes as provided by the federal act.

SECTION 4.16. Section 15.607, Water Code, is amended to read as follows:

Sec. 15.607. APPROVAL OF APPLICATION. On review of recommendations by the executive administrator, the board by resolution may approve an application if the board finds that in its opinion the revenue or taxes or both revenue and taxes pledged by the applicant will be sufficient to meet all the obligations assumed by the applicant ~~[political subdivision]~~ and that the application and assistance applied for meet the requirements of the federal act and state law. A program of water conservation for the more effective use of water shall be required in the same manner as required for approval of an application for financial assistance under Section 15.106 of this code.

SECTION 4.17. Subchapter C, Chapter 16, Water Code, is amended by adding Section 16.059 to read as follows:

Sec. 16.059. COLLECTION OF INSTREAM FLOW DATA; CONDUCT OF STUDIES. (a) The Parks and Wildlife Department, the commission, and the board, in cooperation with other appropriate governmental agencies, shall jointly establish and continuously maintain an instream flow data collection and evaluation program and shall conduct studies and analyses to determine appropriate methodologies for determining flow conditions in the state's rivers and streams necessary to support a sound ecological environment. Any stream that consists only of floodwaters and is dry more than 75 percent of the year is exempt from this section.

(b) The Parks and Wildlife Department, the commission, and the board shall each designate an employee to share equally in the oversight of the program studies.

Other responsibilities shall be divided between the Parks and Wildlife Department, the commission, and the board to maximize present in-house capabilities of personnel and equipment and to minimize costs to the state.

(c) The Parks and Wildlife Department, the commission, and the board shall each have reasonable access to all data, studies, analyses, information, and reports produced by the other agencies.

(d) The priority studies shall be completed not later than December 31, 2010. The Parks and Wildlife Department, the commission, and the board shall establish a work plan that prioritizes the studies and that sets interim deadlines providing for publication of flow determinations for individual rivers and streams on a reasonably consistent basis throughout the prescribed study period. Before publication, completed studies shall be submitted for comment to the commission, the board, and the Parks and Wildlife Department.

(e) Results of studies completed under this section shall be considered by the commission in its review of any management plan, water right, or interbasin transfer.

(f) The board may authorize the use of money from the research and planning fund established under Chapter 15 to accomplish the purposes of this section. The money shall be used by the board in cooperation with the commission and the Parks and Wildlife Department for interagency contracts with cooperating agencies and universities and contracts with private sector establishments, as necessary, to accomplish the purposes of this section.

SECTION 4.18. Section 17.853(c), Water Code, is amended to read as follows:

(c) The board may use the fund only:

(1) to provide state matching funds for federal funds provided to the state water pollution control revolving fund or to any additional state revolving fund created under Subchapter J, Chapter 15;

(2) to provide financial assistance from the proceeds of taxable bond issues to water supply corporations organized under Chapter 67, and other participants;

(3) to provide financial assistance to participants for the construction of water supply projects and treatment works;

(4) to provide financial assistance for an interim construction period to participants for projects for which the board will provide long-term financing through the water development fund; ~~and~~

(5) to provide financial assistance for water supply and sewer service projects in economically distressed areas as provided by Subchapter K, Chapter 17, to the extent the board can make that assistance without adversely affecting the current or future integrity of the fund or of any other financial assistance program of the board; and

(6) to provide funds to the water infrastructure fund created under Section 15.903.

SECTION 4.19. Sections 17.871(2) and (6), Water Code, are amended to read as follows:

(2) "Borrower district" means a political subdivision, including a district or authority created under Article III, Sections 52(b)(1) and (2), or Article XVI, Section 59, of the Texas Constitution, that receives or is eligible to receive a conservation loan from the board for a purpose described by Section 17.895 or 17.8955 [improvement to district facilities].

(6) "Lender district" means a political subdivision, including a soil and water conservation district under Chapter 201, Agriculture Code, a groundwater [an

~~underground water~~] conservation district created under Article XVI, Section 59, of the Texas Constitution, or a district or authority created under Article III, Section 52(b)(1), or Article XVI, Section 59, of the Texas Constitution authorized to supply water for irrigation purposes, that is eligible to receive or that receives a loan from the board for the purpose of making conservation loans to individual borrowers.

SECTION 4.20. Section 17.895, Water Code, is amended to read as follows:

Sec. 17.895. CONSERVATION LOANS. (a) This section applies only to a conservation loan from a lender district that is:

(1) a soil and water conservation district under Chapter 201, Agriculture Code;

(2) a groundwater conservation district created under Section 59, Article XVI, Texas Constitution; or

(3) a district or authority created under Section 52(b)(1), Article III, or Section 59, Article XVI, Texas Constitution.

(b) The board or a lender district [districts] may make conservation loans for capital equipment or materials, labor, preparation costs, and installation costs:

(1) to improve water use efficiency of water delivery and application on existing irrigation systems;

(2) for preparing irrigated land to be converted to dryland conditions; and

(3) for preparing dryland for more efficient use of natural precipitation[;

~~[(4) for preparing and maintaining land to be used for brush control activities, including but not limited to activities conducted pursuant to Chapter 203, Agriculture Code; or~~

~~[(5) for implementing precipitation enhancement activities in areas of the state where such activities would be, in the board's judgment, most effective].~~

(c) [(b)] Conservation loans for the purposes listed in Subsection (b) [(a)] may be made by lender districts to individual borrowers for use on private property or by the board to borrower districts [for use on district facilities].

(d) [(e)] The board may make conservation loans to borrower districts for the cost of purchasing and installing devices, on public or private property, designed to indicate the amount of water withdrawn for irrigation purposes.

(e) [(d)] For purposes of this section, the board or lender districts may seek the advice of the Department of Agriculture regarding the feasibility of a project for which a conservation loan is sought.

SECTION 4.21. Subchapter J, Chapter 17, Water Code, is amended by adding Section 17.8955 to read as follows:

Sec. 17.8955. CONSERVATION LOANS FOR BRUSH CONTROL AND PRECIPITATION ENHANCEMENT. (a) The board or a lender district may make a conservation loan for capital equipment or materials, labor, preparation costs, and installation costs for:

(1) preparing and maintaining land to be used for brush control activities, including activities conducted under Chapter 203, Agriculture Code; or

(2) implementing precipitation enhancement activities in areas of the state where those activities would be, in the board's judgment, most effective.

(b) A conservation loan for a purpose listed in Subsection (a) may be made by a lender district to an individual borrower for use on private property or by the board to a borrower district.

SECTION 4.22. Subchapter L, Chapter 17, Water Code, is amended by adding Section 17.9615 to read as follows:

Sec. 17.9615. TRANSFERS TO RURAL WATER ASSISTANCE FUND.

(a) The board may direct the comptroller to transfer amounts from the financial assistance account to the rural water assistance fund to provide financial assistance under this subchapter for the purposes provided in Section 15.954.

(b) The board shall use the rural water assistance fund as a source of revenue to be deposited in accordance with this subchapter for the payment of principal and interest on water financial assistance bonds issued by the board, the proceeds of which are to be deposited into the rural water assistance fund and to be used to make payments under a bond enhancement agreement with respect to principal or interest on the water financial assistance bonds.

SECTION 4.23. Subchapter L, Chapter 17, Water Code, is amended by adding Section 17.9616 to read as follows:

Sec. 17.9616. TRANSFER TO WATER INFRASTRUCTURE FUND. (a) The board may direct the comptroller to transfer amounts from the financial assistance account to the water infrastructure fund to provide financial assistance under this subchapter for the purposes provided in Section 15.904.

(b) The board shall use the water infrastructure fund as a source of revenue to be deposited in accordance with this subchapter for the payment of principal and interest on water financial assistance bonds issued by the board, the proceeds of which are to be deposited into the water infrastructure fund and to be used to make payments under a bond enhancement agreement with respect to principal or interest on the water financial assistance bonds.

SECTION 4.24. Section 11.32, Tax Code, is amended to read as follows:

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

SECTION 4.25. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.355 to read as follows:

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

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

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

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

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

(5) equipment, services, or supplies used to construct or operate a water or wastewater system or component of a system sponsored by a political subdivision, as defined by Section 15.001, Water Code, which is certified by the Texas Natural Resource Conservation Commission as providing regional water or wastewater service; and

(6) equipment, services, or supplies used to construct or operate a water supply or wastewater system by a private entity as a public-private partnership, as certified by the political subdivision, as defined by Section 15.001, Water Code, that is a party to the project.

#### ARTICLE 5. JOINT COMMITTEE ON WATER RESOURCES

SECTION 5.01. In this article, "committee" means the joint committee on water resources.

SECTION 5.02. The committee shall conduct an interim study and make recommendations regarding:

- (1) increasing the efficient use of existing water resources;
- (2) developing sufficient long-term water financing strategies;
- (3) improving existing water conveyance systems;
- (4) the continuation of the Texas Water Advisory Council;
- (5) determining the appropriate role of environmental and wildlife concerns in water permitting and water development; and
- (6) protection of the natural condition of beds and banks of the state-owned watercourses.

SECTION 5.03. The committee is composed of six members as follows:

- (1) the chair of the Senate Committee on Natural Resources and the chair of the House Committee on Natural Resources;
- (2) two members of the senate appointed by the lieutenant governor; and
- (3) two members of the house of representatives appointed by the speaker of the house of representatives.

SECTION 5.04. The committee shall:

- (1) meet at least annually with the Texas Natural Resource Conservation Commission and the Texas Water Development Board; and
- (2) receive information relating to:
  - (A) encouraging the effective development of water marketing and water movement;
  - (B) prioritizing the use of state funds for financing the development and conservation of water resources; and
  - (C) identifying reasonable mechanisms, including measures for encouraging donation of water rights, for protecting instream uses.

SECTION 5.05. Not later than November 1, 2002, the committee shall make a final report to the lieutenant governor, the speaker of the house of representatives, and the 78th Legislature evaluating the issues described in Section 5.02 of this article.

SECTION 5.06. The committee has the authority necessary to perform its duties and, in connection with those duties, may call and hold hearings.

SECTION 5.07. The committee may request the assistance of state agencies, departments, or offices to carry out its duties.

SECTION 5.08. The Senate Committee on Natural Resources and the House Committee on Natural Resources shall provide staff to the committee.

SECTION 5.09. The committee shall submit a proposed budget to the appropriate committee on administration in each house of the legislature. The administration committees shall jointly approve the committee budget in an amount appropriate for the committee to accomplish its duties under this article.

SECTION 5.10. The committee may travel around the state and hold hearings or public meetings as needed to fulfill its duties under this article.

SECTION 5.11. This article expires and the committee is abolished on January 1, 2003.

ARTICLE 6. RULEMAKING PROCEDURES  
FOR THE EDWARDS AQUIFER AUTHORITY

SECTION 6.01. Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Section 1.115 to read as follows:

Sec. 1.115. RULEMAKING PROCEDURES. (a) The authority shall comply with the procedures provided by this section in adopting rules.

(b) The authority shall provide, by using the United States mail, notice of a proposed rule to all applicants and permit holders. The authority shall publish in a newspaper of general circulation within the boundaries of the authority notice of a public hearing on a proposed rule at least 14 days before the date of the public hearing on the rule. The notice must include:

(1) the date, time, and place of the public hearing;

(2) a statement of the general subject matter of the proposed rule;

(3) the procedures for obtaining copies of the proposed rule and for submitting comments; and

(4) the deadline for submitting comments.

(c) The board shall allow at least 45 days for comment on a proposed rule, other than an emergency rule, before the board adopts the rule. The board shall consider all written comments and shall, in the order adopting the rule, state the reasons and justification for the rule and the authority's responses to the written comments.

(d) The meeting at which a proposed rule is adopted as a final rule must be an open meeting, and the public must be allowed to make comments on the proposed rule and the agency responses. A proposed rule becomes final and effective on the 10th day after the date the rule is adopted by the board.

(e) Notwithstanding Subsections (b)-(d) of this section, the board may adopt emergency rules to prevent imminent harm to human health, safety, or welfare, or if compliance with the procedures provided in Subsections (b)-(d) would prevent an effective response to emergency aquifer or springflow conditions. The board may adopt emergency rules at an emergency meeting called for that purpose. Emergency rules are effective immediately on adoption for a period of 120 days and may be renewed once for not more than 60 days.

(f) Subsections (b)-(d) of this section do not apply to the adoption of bylaws or internal procedures of the board and authority.

SECTION 6.02. Section 1.15, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Subsections (e) and (f) to read as follows:

(e) The authority shall conduct a contested case hearing on a permit application if a person with a personal justiciable interest related to the application requests a hearing on the application.

(f) The authority shall adopt rules establishing procedures for contested case hearings consistent with Subchapters C, D, and F, Chapter 2001, Government Code.

SECTION 6.03. Sections 1.11(h) and 1.41(e), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, are repealed.

SECTION 6.04. A rule adopted by the Edwards Aquifer Authority before the effective date of this Act remains in effect until repealed, amended, or readopted.

SECTION 6.05. The rules in 31 Texas Administrative Code Part 20 have no effect. Notwithstanding any other law, the secretary of state shall delete 31 Texas Administrative Code Part 20 from the Texas Administrative Code as if the rules included in that part were repealed.

ARTICLE 7. LIMITED LIABILITY FOR  
AQUATIC HERBICIDE APPLICATION

SECTION 7.01. Subchapter B, Chapter 26, Water Code, is amended by adding Section 26.050 to read as follows:

Sec. 26.050. LIMITED LIABILITY FOR AQUATIC HERBICIDE APPLICATION. (a) In this section, "commercially licensed aquatic herbicide applicator" means a person who holds a commercial applicator license issued by the Department of Agriculture under Chapter 76, Agriculture Code, to apply aquatic herbicides.

(b) Except as provided by Chapter 12, Parks and Wildlife Code, a commercially licensed aquatic herbicide applicator working under contract with a river authority organized pursuant to Article XVI, Section 59, Texas Constitution, is not liable for damages in excess of \$2 million for all types for personal injury, property damage, or death resulting directly or indirectly from the application of aquatic herbicide in compliance with such contract, applicable law, and the license terms or permit.

(c) The control and elimination of noxious weeds, grasses, and vegetation in the rivers, tributaries, impoundments, and reservoirs of the state through the application by river authorities or their agents, employees, or contractors, in compliance with applicable law, licenses, and permits, of aquatic herbicides are essential governmental functions, and except to the extent provided in Chapter 101, Civil Practice and Remedies Code, nothing herein shall be deemed or construed to waive, limit, or restrict the governmental immunity of river authorities in the performance of such governmental functions.

ARTICLE 8. CONCENTRATED  
ANIMAL FEEDING OPERATIONS

SECTION 8.01. Section 26.0286, Water Code, is amended to read as follows:

Sec. 26.0286. PROCEDURES APPLICABLE TO PERMITS FOR CERTAIN CONCENTRATED ANIMAL FEEDING OPERATIONS. (a) In this section:

(1) "Sole-source[~~-, "sole-source~~]" surface drinking water supply" means a body of surface water that:

[(+)] is designated as a sole-source surface drinking [public] water supply in rules adopted by the commission [under Section 26.023; and

[(2) is the single source of supply of a public water supply system, exclusive of emergency water interconnections].

(2) "Protection zone" means an area so designated by commission rule under Subsection (c).

(b) The commission shall process an application for authorization to construct or operate a concentrated animal feeding operation as a specific permit under Section 26.028 subject to the procedures provided by Subchapter M, Chapter 5, if, on the date the commission determines that the application is administratively complete, any part of a pen, lot, pond, or other type of control or retention facility or structure of the concentrated animal feeding operation is located or proposed to be located within the protection zone of a sole-source surface drinking water supply. For the purposes of this subsection, a land application area is not considered a control or retention facility[~~-~~

[(1) in the watershed of a sole-source surface drinking water supply; and

[(2) sufficiently close, as determined by the commission by rule, to an intake of a public water supply system in the sole-source surface drinking water supply that

~~contaminants discharged from the concentrated animal feeding operation could potentially affect the public drinking water supply].~~

(c) For the purposes of this section only, the commission by rule shall designate a surface water body as a sole-source surface drinking water supply if that surface water body is identified as a public water supply in rules adopted by the commission under Section 26.023 and is the sole source of supply of a public water supply system, exclusive of emergency water connections. At the same time, the commission shall designate as a protection zone any area within the watershed of a sole-source surface drinking water supply that is:

(1) within two miles of the normal pool elevation of a body of surface water that is a sole-source surface drinking water supply;

(2) within two miles of that part of a perennial stream that is:

(A) a tributary of a sole-source surface drinking water supply; and

(B) within three linear miles upstream of the normal pool elevation of a sole-source surface drinking water supply; or

(3) within two miles of that part of a stream that is a sole-source surface drinking water supply, extending three linear miles upstream from the water supply intake.

SECTION 8.02. Not later than the 45th day after the effective date of this Act, the Texas Natural Resource Conservation Commission by order shall identify surface water bodies that are considered "sole-source surface drinking water supplies" for purposes of Section 26.0286(b), Water Code, as amended by this Act, and shall designate the protection zones for those identified water bodies. The order expires on the date on which the commission adopts final rules under Section 26.0286(c), Water Code, as added by this Act.

#### ARTICLE 9. REPORTS; REPEALER;

##### TRANSITION; VALIDATION; EFFECTIVE DATE

SECTION 9.01. BOARD STUDY AND REPORT ON FINANCING WATER INFRASTRUCTURE PROJECTS. The Texas Water Development Board shall consider the reports submitted by the regional planning groups under Section 16.053(q), Water Code, as added by this Act, relating to financing water infrastructure projects and shall consult with potentially impacted groups and other interested persons regarding the information reported and the recommendations made by the regional planning groups. Not later than October 1, 2002, the board shall submit to the legislature a report consisting of the regional planning groups' reports and the board's analysis of and recommendations regarding those reports.

SECTION 9.02. REPEALER. Sections 35.005, 35.006, and 36.121, Water Code, are repealed.

SECTION 9.03. TRANSITIONS. (a) The changes in law made by this Act by amending Section 17.895, Water Code, and adding Section 17.8955, Water Code, apply only to a conservation loan for which an application is filed on or after the effective date of this Act. A conservation loan for which an application was filed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

(b) Not later than January 1, 2002, the Texas Water Development Board shall adopt rules to administer Subchapter O, Chapter 15, Water Code, as added by this Act, including rules establishing procedures for applications for and the award of financial assistance for water projects, for the investment of funds, and for the administration of the water infrastructure fund created by this Act.

(c) Not later than January 1, 2002, the Texas Water Development Board shall adopt rules to administer Subchapter P, Chapter 15, Water Code, as added by this Act, including establishing procedures for the application for and award of loans, the distribution of loans, the investment of funds, and the administration of loans and the rural water assistance fund.

(d) Not later than January 1, 2002, the Texas Water Development Board shall adopt rules requiring a holder of a surface water permit, certified filing, or certificate of adjudication for surface water, a holder of a permit for the export of groundwater from a groundwater conservation district, a retail public water supplier, a wholesale water provider, and an irrigation district to report to the board information on certain water pipelines and other facilities that can be used for water conveyance.

(e) The changes in law made by this Act by amending Sections 11.023 and 11.122, Water Code, shall not change the existing priority of any industrial water right holder on the mainstem of the Rio Grande below Amistad Reservoir who uses or supplies water to a nursery grower.

#### SECTION 9.04. FINDINGS RELATED TO PROCEDURAL REQUIREMENTS.

(a) The proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and other laws of this state, including the governor, who has submitted the notice and Act to the Texas Natural Resource Conservation Commission.

(b) The Texas Natural Resource Conservation Commission has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(c) All requirements of the constitution and laws of the state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 9.05. EFFECTIVE DATE. This Act takes effect September 1, 2001.

#### **Floor Amendment No. 1**

Amend **CSSB 2** (House committee printing) in SECTION 1.01 of the bill, proposed Section 9.012, Water Code (page 8, lines 22-25), by striking the first sentence of that proposed section.

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

Amend **CSSB 2** (House committee printing) as follows:

(1) In SECTION 2.01 of the bill, in proposed Subdivision (11), Section 11.002, Water Code (page 10, lines 3 and 4), strike the last sentence and substitute "The term does not include waters originating in bays or arms of the Gulf of Mexico."

(2) In SECTION 2.29 of the bill, in proposed Subdivision (18), Section 36.001, Water Code (page 44, lines 21 through 23), strike the last sentence and substitute "The term does not include waters originating in bays or arms of the Gulf of Mexico."

#### **Floor Amendment No. 4**

Amend **CSSB 2** as follows:

On page 20, line 20, strike "A person" and insert "An entity".

**Floor Amendment No. 5**

Amend **CSSB 2** by deleting the following sentence on page 20, lines 23 through 25, of the substitute in its entirety:

"A person who fails to complete and return the survey commits an offense that is punishable as a Class C misdemeanor."

**Floor Amendment No. 6**

Amend **CSSB 2** as follows:

Strike 36.001(19)(E) on page 45, line 12 in its entirety.

**Floor Amendment No. 7**

Amend **CSSB 2** by inserting the following new Section 36.001(23), Water Code, after line 27 on page 45 of the substitute to read as follows:

(23) "Public water supply well" means, for purposes of a district governed by this chapter, a well that produces the majority of its water for use by a public water system.

**Floor Amendment No. 8**

Amend **CSSB 2**, on page 56 between lines 4 and 5, by adding the following text:

(d) If there is conflict between this section and Section 26.359, this section governs.

**Floor Amendment No. 9**

Amend **CSSB 2** by inserting the following new Section 36.102(e), Water Code, between lines 20 and 21 on page 56 of the substitute to read as follows:

(e) The board shall not assess a penalty for breach of a district rule regulating the production of groundwater against a person for producing groundwater for the generation of electricity if such production is necessary to protect public safety and welfare, no reasonable alternative water supply is available to the producer for the generation of the electricity, and the rule or production regulation that was breached by the person was adopted or set by the board less than two years prior to the date of the rule violation."

**Floor Amendment No. 10**

Amend **CSSB 2** as follows:

On page 64, lines 8 and 9, strike "provided that agriculture, municipal, and the natural resources are protected,".

**Floor Amendment No. 11**

Amend **CSSB 2** as follows:

On page 65, line 3, after "site", insert ", per acre".

**Floor Amendment No. 12**

Amend **CSSB 2** as follows:

On page 65, line 13, after "utility" insert ", if that utility may, either by statute or contract, prevent groundwater production by others within that utility's service area".

**Floor Amendment No. 13**

Amend **CSSB 2** as follows:  
 Amend Section 2.51 on page 69, line 26  
 Strike "section" and replace with "chapter"  
 On page 70, line 2  
 Strike "section" and replace with "chapter"

**Floor Amendment No. 14**

Amend **CSSB 2** as follows:  
 (1) On page 72, line 27, strike "of five years".  
 (2) On page 72, line 27, after "(i)" insert "(1)".

**Floor Amendment No. 15**

Amend **CSSB 2** as follows:  
 (1) On page 73, line 1, strike "30 years" and insert "the terms agreed to under (i)(2)".  
 (2) On page 73, line 3, strike "five-year".

**Floor Amendment No. 16**

Amend **CSSB 2** as follows:  
 On page 74, line 22, insert a new subsection (r) to read as follows:  
(r) Subsections (b), (e)(2), (e)(3), (f) and (g) apply only to a transfer of water that is initiated or increased after March 2, 1997.

**Floor Amendment No. 17**

Amend **CSSB 2** by inserting the following after the word "District" on page 75, line 18, of the substitute:  
", the Lone Star Groundwater Conservation District,"

**Floor Amendment No. 18**

Amend **CSSB 2** as follows:  
 On page 80, strike line 16 in its entirety.

**Floor Amendment No. 21**

Amend **CSSB 2** in ARTICLE 2 of the bill (House committee printing, page 82, lines 14-20) by striking SECTION 2.62 and renumbering any subsequent SECTIONS accordingly.

**Floor Amendment No. 23**

Amend **CSSB 2** (Committee Printing), in ARTICLE 3 of the bill by striking PART 3 and substituting the following:

PART 3. HAYS TRINITY GROUNDWATER  
 CONSERVATION DISTRICT

SECTION 3.0301. RATIFICATION OF CREATION. The creation by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999 (SB 1911), of the Hays Trinity Groundwater Conservation District in Hays County is ratified as required by Section 15(a) of that Act, subject to approval at a confirmation election under Section 3.0309 of this part.

SECTION 3.0302. DEFINITION. In this part, "district" means the Hays Trinity Groundwater Conservation District.

SECTION 3.0303. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of Hays County, Texas, excluding any area in Hays County that is, on the effective date of this Act, within another groundwater conservation district with authority to require a permit to drill or alter a well for the withdrawal of groundwater. Not later than the 30th day after the date of the first meeting of the board of directors of the district, and before a confirmation election is held, the board shall prepare and file a description of district boundaries with the Hays County clerk and the Texas Natural Resource Conservation Commission.

SECTION 3.0304. GENERAL POWERS. (a) The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law that is in conflict or inconsistent with this part, including any provision of Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999 (SB 1911).

(b) Notwithstanding Subsection (a) of this section, the following provisions prevail over a conflicting or inconsistent provision of this part:

- (1) Sections 36.1071-36.108, Water Code;
- (2) Sections 36.159-36.161, Water Code; and
- (3) Subchapter I, Chapter 36, Water Code.

(c) The district may not enter property to inspect an exempt well without the property owner's permission.

(d) The Hays County Commissioners Court by resolution may require an election to affirm or reverse a decision of the board of directors of the district not later than six months after the date of the decision.

(e) The district may not adopt standards for the construction of a residential well that are more stringent than state standards for a residential well.

SECTION 3.0305. EXEMPT WELLS. (a) The following wells are exempt from the requirements of Chapter 36, Water Code, and may not be regulated, permitted, or metered by the district:

(1) a well used for domestic use by a single private residential household and producing less than 25,000 gallons per day; and

(2) a well used for conventional farming and ranching activities, including such intensive operations as aquaculture, livestock feedlots, or poultry operations.

(b) The district may not require a permit to construct a well described by Subsection (a)(2) of this section.

(c) A well used for dewatering and monitoring in the production of coal or lignite is exempt from permit requirements, regulations, and fees imposed by the district.

SECTION 3.0306. FISCAL RESPONSIBILITIES. (a) The district annually shall prepare a budget showing proposed expenditures and disbursements and estimated receipts and collections for the next fiscal year and shall hold a public hearing on the proposed budget. The district must publish notice of the hearing at least once in a newspaper of general circulation in the county not later than the 10th day before the date of the hearing. A taxpayer of the district is entitled to appear at the hearing to be heard regarding any item in the proposed budget.

(b) At the written request of the Hays County Commissioners Court, the county auditor shall audit the performance of the district. The court may request a general audit of the performance of the district or may request an audit of only one or more district matters.

SECTION 3.0307. BOARD OF DIRECTORS. (a) The district is governed by a board of five directors.

(b) Temporary directors serve until initial directors are elected under Section 3.0309 of this part.

(c) Initial directors serve until permanent directors are elected under Section 3.0310 of this part.

(d) Permanent directors serve staggered two-year terms.

(e) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(f) A director serves until the director's successor has qualified.

(g) If there is a vacancy on the board, the Hays County Commissioners Court shall appoint a director to serve the remainder of the term.

(h) A director may not receive a salary or other compensation for service as a director but may be reimbursed for actual expenses of attending meetings at the rate in effect for employees of Hays County.

SECTION 3.0308. METHOD OF ELECTING DIRECTORS: SINGLE-MEMBER DISTRICTS. (a) The temporary directors shall draw five numbered, single-member districts for electing directors.

(b) For the conduct of an election under Section 3.0309 or Section 3.0310 of this part, the board shall provide for one director to be elected from each of the single-member districts. A director elected from a single-member district represents the residents of that single-member district.

(c) To be qualified to be a candidate for or to serve as director, a person must be a registered voter in the single-member district that the person represents or seeks to represent.

(d) The initial or permanent directors may revise the districts as necessary or appropriate. The board of directors shall revise each single-member district after each federal decennial census to reflect population changes. At the first election after the single-member districts are revised, a new director shall be elected from each district. The directors shall draw lots to determine which two directors serve one-year terms and which three directors serve two-year terms.

SECTION 3.0309. CONFIRMATION AND INITIAL DIRECTORS' ELECTION.

(a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect initial directors.

(b) At the confirmation and initial directors' election, the temporary board of directors shall have placed on the ballot the name of any candidate filing for an initial director's position and blank spaces to write in the names of other persons. A temporary director who is qualified to be a candidate under Section 3.0308 of this part may file for an initial director's position.

(c) Section 41.001(a), Election Code, does not apply to a confirmation and initial directors' election held as provided by this section.

(d) Except as provided by this section, a confirmation and initial directors' election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

SECTION 3.0310. ELECTION OF DIRECTORS. (a) On the first Saturday in May or the first Tuesday after the first Monday in November of the first even-numbered year after the year in which the district is authorized to be created at a confirmation election, an election shall be held in the district for the election of three directors to serve two-year terms and two directors to serve one-year terms.

(b) On the first Saturday in May or the first Tuesday after the first Monday in November, as applicable, of each subsequent second year following the election held under Subsection (a) of this section, the appropriate number of directors shall be elected.

SECTION 3.0311. OTHER ELECTIONS. An election held by the district, other than an election under Section 3.0309 or 3.0310 of this part, must be scheduled to coincide with a general election in May or November.

SECTION 3.0312. FUNDING AUTHORITY. (a) Except as provided by Sections 3.0305(b) and (c) of this part, the district may require a permit for the construction of a new well completed after the effective date of this Act and may charge and collect a construction permit fee not to exceed \$300.

(b) The district may levy and collect a water utility service connection fee not to exceed \$300 for each new water service connection made after the effective date of this Act. This subsection does not apply to a water utility that has surface water as its sole source of water.

(c) Notwithstanding Section 3.0304(a) of this part or Subchapter G, Chapter 36, Water Code, the district may not impose a tax or assess or collect any fees except as authorized by Subsection (a) or (b) of this section.

SECTION 3.0313. EXPIRATION DATE. If the creation of the district is not confirmed at a confirmation election held under Section 3.0309 of this part before September 1, 2003, this part expires on that date.

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

Amend **CSSB 2** as follows and renumber the subsequent section accordingly:

(1) Strike Article 3, Part 7 (page 112, line 8 through page 116, line 8).

#### **Floor Amendment No. 27**

Amend **CSSB 2** (House committee printing) as follows:

On page 179, after line 20, add new subsection (f) as follows:

(f) If any changes made by this Act to Chapter 36, Water Code, conflict with changes made to Chapter 36, Water Code, by any other Act passed this legislative session, this Act shall prevail.

#### **Floor Amendment No. 30**

Amend **CSSB 2** (House Committee Printing) as follows:

(1) In SECTION 9.02 of the bill (House Committee Printing, page 178, lines 12-13) strike "35.005, 35.006, and 36.121" and substitute "35.005 and 35.006".

(2) Add the following appropriately numbered ARTICLE and SECTION to the bill and renumber subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_\_. MISCELLANEOUS PROVISIONS

SECTION \_\_\_\_\_. Section 36.121, Water Code, is amended to read as follows:

Sec. 36.121. LIMITATION ON RULEMAKING POWER OF DISTRICTS OVER WELLS IN CERTAIN COUNTIES. Except as provided by Section 36.117, a district that is created under this chapter on or after September 1, 1991, shall exempt from regulation under this chapter a well and any water produced or to be produced by a well that is located in a county that has a population of 14,000 or less if the water is to be used solely to supply a municipality that has a population of 121,000 [~~145,000~~] or less and the rights to the water produced from

the well are owned by a political subdivision that is not a municipality, or by a municipality that has a population of 100,000 [~~93,000~~] or less, and that purchased, owned, or held rights to the water before the date on which the district was created, regardless of the date the well is drilled or the water is produced. The district may not prohibit the political subdivision or municipality from transporting produced water inside or outside the district's boundaries.

### **Floor Amendment No. 31**

Amend **CSSB 2** on page 175, line 3 by striking "for all types for" and substituting "for each occurrence of"

### **Floor Amendment No. 32**

Amend **CSSB 2** by adding a new appropriately numbered SECTION to read as follows:

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.

### **Floor Amendment No. 33**

Amend **CSSB 2** by adding the following appropriately numbered ARTICLE and renumbering subsequent ARTICLES and SECTIONS accordingly:

ARTICLE \_\_\_\_\_. NORTH HARRIS COUNTY  
REGIONAL WATER AUTHORITY

SECTION \_\_\_\_\_. Section 1.03, Chapter 1029, Acts of the 76th Legislature, Regular Session, 1999, is amended by adding Subsections (e) and (f) to read as follows:

(e) The governing body of the city of Jersey Village may call a special election before December 31, 2001, to allow the voters of the city to determine whether the area that on September 1, 2001, was inside the municipal limits of the city should be excluded from the authority's territory. If a majority of the voters voting at that election vote to exclude that area from the authority's territory, then, notwithstanding Subsections (a) and (b) of this section, that area is excluded.

(f) If the territory of the city is excluded under Subsection (e) of this section, the city may not petition to rejoin the authority for a period of five years. If the city

petitions to rejoin the authority after the five year period of ineligibility expires, the authority may require the city to pay:

(1) the amount the city would have paid had the territory of the city remained within the authority, plus interest; and

(2) any additional costs determined by the authority's board to be equitable in light of the costs incurred by other districts and entities within the authority to support the expenses of the authority and establish a groundwater protection plan and provide alternative water supplies, including a pro rata share of any debt service or principal payments made by the authority.

#### **Floor Amendment No. 34**

Amend **CSSB 2** by adding the following article, numbered appropriately, and renumbering subsequent articles and sections accordingly:

#### ARTICLE \_\_\_\_\_. WATER UTILITY SYSTEMS

SECTION \_\_\_\_\_. Section 13.137, Water Code, is amended to read as follows:

Sec. 13.137. OFFICE AND OTHER BUSINESS LOCATIONS OF UTILITY; RECORDS; REMOVAL FROM STATE. (a) Every utility shall:

(1) make available and notify its customers of a business location where its customers may make payments to prevent disconnection of or to restore service:

(A) in each county in which the utility provides service; or

(B) not more than 20 miles from the residence of any residential customer if there is no location to receive payments in the county; and

(2) have an office in a county of this state or in the immediate area in which its property or some part of its property is located in which it shall keep all books, accounts, records, and memoranda required by the commission to be kept in this state.

(b) The commission by rule may provide for waiving the requirements of Subsection (a)(1) for a utility for which meeting those requirements would cause a rate increase or otherwise harm or inconvenience customers. The rules must provide for an additional 14 days to be given for a customer to pay before a utility that is granted a waiver may disconnect service for late payment.

(c) Books, accounts, records, or memoranda required by the regulatory authority to be kept in the state may not be removed from the state, except on conditions prescribed by the commission.

SECTION \_\_\_\_\_. Section 13.144, Water Code, is amended to read as follows:

Sec. 13.144. NOTICE OF WHOLESALE WATER SUPPLY CONTRACT. A district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply shall provide the commission with a certified copy of any wholesale water supply contract with a retail public utility within 30 days after the date of the execution of the contract. The submission must include the amount of water being supplied, term of the contract, consideration being given for the water, purpose of use, location of use, source of supply, point of delivery, limitations on the reuse of water, a disclosure of any affiliated interest between the parties to the contract, and any other condition or agreement relating to the contract.

SECTION \_\_\_\_\_. Subchapter E, Chapter 13, Water Code, is amended by adding Section 13.145 to read as follows:

Sec. 13.145. MULTIPLE SYSTEMS CONSOLIDATED UNDER TARIFF. A utility may consolidate more than one system under a single tariff only if:

(1) the systems under the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and

(2) the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

SECTION \_\_\_\_\_. Section 13.182, Water Code, is amended to read as follows:

Sec. 13.182. JUST AND REASONABLE RATES. (a) The regulatory authority shall ensure that every rate made, demanded, or received by any utility or by any two or more utilities jointly shall be just and reasonable.

(b) Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of consumers.

(c) For ratemaking purposes, the commission may treat two or more municipalities served by a utility as a single class wherever the commission considers that treatment to be appropriate.

(d) The commission by rule shall establish a preference that rates under a consolidated tariff be consolidated by region. The regions under consolidated tariffs must be determined on a case-by-case basis.

SECTION \_\_\_\_\_. Section 13.183, Water Code, is amended by amending Subsection (c) and adding Subsections (d) and (e) to read as follows:

(c) To ensure that retail customers receive a higher quality, more affordable, or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the regulatory authority, by rule or ordinance, as appropriate, may adopt specific alternative ratemaking [may develop] methodologies for water or sewer rates based on factors other than rate of return and those specified in Section 13.185. Overall revenues determined according [pursuant] to an alternative ratemaking [alternate] methodology adopted [developed] under this section must provide revenues to the utility that satisfy the requirements of Subsection (a). The regulatory authority may not approve rates under an alternative ratemaking methodology unless the regulatory authority adopts the methodology before the date the rate application was administratively complete.

(d) A regulatory authority other than the commission may not approve an acquisition adjustment for a system purchased before the effective date of an ordinance authorizing acquisition adjustments.

(e) In determining to use an alternative ratemaking methodology [alternate ratemaking methodologies], the regulatory authority shall assure that rates, operations, and services are just and reasonable to the consumers and to the utilities.

SECTION \_\_\_\_\_. Section 13.187, Water Code, is amended to read as follows:

Sec. 13.187. STATEMENT OF INTENT TO CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) A utility may not make changes in its rates except by delivering a statement of intent to each ratepayer and with the regulatory authority having original jurisdiction at least 60 [30] days before the effective date of the proposed change. The effective date of the new rates must be the first day of a billing period, and the new rates may not apply to service received before the effective date of the new rates. The statement of intent must include:

(1) the information required by the regulatory authority's rules;

(2) a billing comparison regarding the existing water rate and the new water rate computed for the use of:

(A) 10,000 gallons of water; and

(B) 30,000 gallons of water; and

(3) a billing comparison regarding the existing sewer rate and the new sewer rate computed for the use of 10,000 gallons, unless the utility proposes a flat rate for sewer services.

(b) A copy of the statement of intent shall be mailed or delivered to the appropriate offices of each affected municipality, and to any other affected persons as required by the regulatory authority's rules.

(c) When the statement of intent is delivered, the utility shall file with the regulatory authority an application to change rates. The application must include information the regulatory authority requires by rule. If the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that supports the costs and expenses that are shown in the application, the regulatory authority may disallow the nonsupported expenses.

(d) If the application or the statement of intent is not substantially complete or does not comply with the regulatory authority's rules, it may be rejected and the effective date of the rate change may be suspended until a properly completed application is accepted by the regulatory authority and a proper statement of intent is provided. The commission may also suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before the commission or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.235(n) of this code.

(e) ~~(b)~~ If, before the 91st day ~~[within 60 days]~~ after the effective date of the rate change, the regulatory authority receives a complaint from any affected municipality, or from the lesser of 1,000 or 10 percent of the ratepayers of the utility over whose rates the regulatory authority has original jurisdiction, the regulatory authority shall set the matter for hearing.

(f) The regulatory authority may set the matter for hearing on its own motion at any time within 120 days after the effective date of the rate change. If more than half of the ratepayers of the utility receive service in a county with a population of more than 2.5 million, the hearing must be held at a location in that county.

(g) The hearing may be informal.

(h) If, after hearing, the regulatory authority finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of law, the regulatory authority shall determine the rates to be charged by the utility and shall fix the rates by order served on the utility.

(i) ~~(e)~~ The regulatory authority, pending final action in a rate proceeding, may order the utility to deposit all or part of the rate increase received or to be received into an escrow account with a financial institution approved by the regulatory authority. Unless otherwise agreed to by the parties to the rate proceeding, the utility shall refund or credit against future bills all sums collected during the pendency of the rate proceeding in excess of the rate finally ordered plus interest as determined by the regulatory authority.

(j) For good cause shown, the regulatory authority may authorize the release of funds to the utility from the escrow account during the pendency of the proceeding.

(k) If the regulatory authority receives at least the number of complaints from ratepayers required for the regulatory authority to set a hearing under Subsection (e),

the regulatory authority may, pending the hearing and a decision, suspend the date the rate change would otherwise be effective. The proposed rate may not be suspended for longer than:

(1) 90 days by a local regulatory authority; or

(2) 150 days by the commission.

(l) At any time during the pendency of the rate proceeding the regulatory authority may fix interim rates to remain in effect until a final determination is made on the proposed rate.

(m) If the regulatory authority sets a final rate that is higher than the interim rate, the utility shall be allowed to collect the difference between the interim rate and final rate unless otherwise agreed to by the parties to the rate proceeding.

(n) For good cause shown, the regulatory authority may at any time during the proceeding require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate.

(o) If a [the] regulatory authority other than the commission establishes interim rates or an escrow account, the regulatory authority must make a final determination on the rates not later than the first anniversary of [within 335 days after] the effective date of the interim rates or escrowed rates or the rates are automatically approved as requested by the utility.

(p) [~~t~~] Except to implement a rate adjustment provision approved by the regulatory authority by rule or ordinance, as applicable, or to adjust the rates of a newly acquired utility system, a utility or two or more utilities under common control and ownership may not file a statement of intent to increase its rates more than once in a 12-month period, unless the regulatory authority determines that a financial hardship exists. If the regulatory authority requires the utility to deliver a corrected statement of intent, the utility is not considered to be in violation of the 12-month filing requirement.

SECTION \_\_\_\_\_. Subchapter I, Chapter 13, Water Code, is amended by adding Section 13.343 to read as follows:

Sec. 13.343. WHOLESALE WATER CONTRACTS BETWEEN CERTAIN AFFILIATES. (a) The owner of a utility that supplies retail water service may not contract to purchase from an affiliated supplier wholesale water service for any of that owner's systems unless:

(1) the wholesale service is provided for not more than 90 days to remedy an emergency condition, as defined by commission rule; or

(2) the executive director determines that the utility cannot obtain wholesale water service from another source at a lower cost than from the affiliate.

(b) The utility may not purchase groundwater from any provider if:

(1) the source of the groundwater is located in a priority groundwater management area; and

(2) a wholesale supply of surface water is available.

SECTION \_\_\_\_\_. (a) The changes in law made by this Act to Chapter 13, Water Code, apply to a proceeding in which the Texas Natural Resource Conservation Commission has not issued a final order before the effective date of this Act.

(b) Section 13.343, Water Code, as added by this Act, does not apply to a contract executed before the effective date of this Act. A contract executed before the effective date of this Act is governed by the law in effect on the date it was executed, and that law is continued in effect for that purpose.

**Floor Amendment No. 35**

Amend **CSSB 2** (House Committee Printing) by adding the following appropriately numbered section:

SECTION \_\_\_\_\_. Amend Section 26.177, Water Code, by adding Subsection (h) to read as follows:

(h) Property subject to a permit or plat in the extraterritorial jurisdiction of a municipality may not be subjected to new or additional water pollution regulations if the property is transferred to another municipality's extraterritorial jurisdiction, and all provisions of Chapter 245 Local Government Code, shall apply to the property.

**Floor Amendment No. 36**

Amend **CSSB 2** by adding a new SECTION \_\_\_\_ to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 26.359, Water Code, is amended to read as follows:

Sec. 26.359. LOCAL REGULATION OR ORDINANCE. (a) In this section, "local government" means a school district, county, municipality, junior college district, river authority, water district or other special district, or other political subdivision created under the constitution or a statute of this state.

(b) A [This subchapter establishes a unified statewide program for underground and surface water protection, and any local] regulation or ordinance adopted by a local government that imposes standards [is effective only to the extent the regulation or ordinance does not conflict with the standards adopted] for the design, construction, installation, or operation of underground storage tanks is not valid [under this subchapter].

(c) This section does not apply to a rule adopted by the Edwards Aquifer Authority, or to a regulation or ordinance in effect as of January 1, 2001, or thereafter amended.

**Floor Amendment No. 37**

Amend **CSSB 2** (House committee printing) by adding appropriately numbered new SECTIONS to the bill to read as follows and appropriately renumbering subsequent SECTIONS of the bill:

SECTION \_\_\_\_\_. Section 1.44, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Subsection (e) to read as follows:

(e) The authority may contract for injection or artificial recharge under this section only if provision is made for protecting and maintaining the quality of groundwater in the receiving part of the aquifer, and:

(1) the water used for artificial recharge is groundwater withdrawn from the aquifer; or

(2) the water is recharged through a natural recharge feature.

SECTION \_\_\_\_\_. Section 27.051, Water Code, is amended by adding Subsection (h) to read as follows:

(h) The commission may not authorize by rule or permit an injection well that transects or terminates in the Edwards Aquifer. The commission by rule may authorize injection of groundwater withdrawn from the Edwards Aquifer, or injections of storm water, flood water, or groundwater through improved sinkholes or caves located in karst topographic areas. For purposes of this subsection, "Edwards Aquifer" has the meaning assigned by Section 26.046(a).

SECTION \_\_\_\_\_. The change in law made by Section 27.051(h), Water Code, as added by this Act, applies only to an application for a permit that is filed with the Texas Natural Resource Conservation Commission on or after September 1, 2001.

**Floor Amendment No. 40**

Amend **CSSB 2** by adding the following ARTICLE, with the article and section appropriately numbered, and renumbering the subsequent articles and sections accordingly:

ARTICLE \_\_\_\_\_. COUNTY WATER  
AND SEWER SYSTEMS

SECTION \_\_\_\_\_. Section 412.016, Local Government Code, is amended by adding Subsection (d) to read as follows:

(d) Without further authorization, a county may contract with a nonprofit corporation, including a corporation operating under Chapter 67, Water Code, to acquire, own, or operate a water or sewer utility system and may levy ad valorem taxes to pay the corporation under the contract.

**Floor Amendment No. 41**

Amend **CSSB 2** (House committee printing) in ARTICLE 7 of the bill, SECTION 7.01, at the end of proposed Section 26.050, Water Code (page 175, between lines 16 and 17) by adding Subsection (d) to read as follows:

(d) The limited liability provided by this section does not apply to a commercially licensed aquatic herbicide applicator if the applicator uses the wrong chemical, fails to follow directions for the application of the aquatic herbicide, or applies the aquatic herbicide in a manner that violates federal or state law.

**Floor Amendment No. 42**

Amend **CSSB 2** by adding the following ARTICLE, appropriately numbered, and renumbering the subsequent articles and sections accordingly:

ARTICLE \_\_\_\_\_. REVOCATION OF CERTIFICATE  
OF RETAIL PUBLIC UTILITY

SECTION \_\_\_\_\_. Subchapter G, Chapter 13, Water Code, is amended by adding Section 13.2541 to read as follows:

Sec. 13.2541. REVOCATION OF CERTIFICATE WHEN SERVICE PROVIDED TO A MUNICIPALITY. (a) This section applies only to a municipality with a population of more than 1.9 million.

(b) On request of a municipality served by a retail public utility, the commission at any time after notice and hearing may revoke the retail public utility's certificate of public convenience and necessity if it finds that the retail public utility:

(1) has never provided, is no longer providing, or has failed to provide continuous and adequate service in the municipality requesting the revocation; or

(2) has been grossly or continuously mismanaged or has grossly or continuously not complied with this chapter, commission rules, or commission orders.

(c) If the certificate of a retail public utility is revoked under Subsection (b), the municipality that requested the revocation shall operate the decertified retail public utility for an interim period prescribed by commission rule and shall request commission approval to acquire the decertified retail public utility's facilities and to

transfer the decertified retail public utility's certificate of convenience and necessity to the municipality. The municipality must apply in accordance with Subchapter H.

(d) The compensation paid to the decertified retail public utility for its facilities shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the municipality. The determination of compensation by the independent appraiser shall be binding on the commission. The municipality shall pay the costs of the independent appraiser. For the purpose of implementing this section, the value of real property shall be determined according to the standards prescribed by Chapter 21, Property Code, governing actions in eminent domain.

(e) The commission shall determine whether the municipality shall pay the compensation in a lump sum or over a specified period.

### **Amendment No. 43**

Amend Floor Amendment No. 42 to **CSSB 2** as follows:

Strike line 9 of page 1 and substitute a period.

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

Amend **CSSB 2**, third reading, by striking SECTION 2.09. Section 11.142(b) of the bill (page 16, lines 8 through 16) and renumbering the subsequent sections of the bill accordingly.

### **Floor Amendment No. 2 on Third Reading**

Amend **CSSB 2** on third reading as follows:

(1) At the end of the heading for ARTICLE 3 of the bill, add "AND CREATIONS".

(2) Add an appropriately numbered new PART to ARTICLE 3 of the bill, and appropriately number SECTIONS of that PART and renumber subsequent SECTIONS of that ARTICLE, to read as follows:

PART \_\_\_\_\_. KIMBLE COUNTY GROUNDWATER  
CONSERVATION DISTRICT

SECTION \_\_\_\_\_. CREATION. (a) A groundwater conservation district, to be known as the Kimble County Groundwater Conservation District, is created in Kimble County, subject to approval at a confirmation election under this part. The district is a governmental agency and a body politic and corporate.

(b) The district is created under and is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

SECTION \_\_\_\_\_. DEFINITION. In this part, "district" means the Kimble County Groundwater Conservation District.

SECTION \_\_\_\_\_. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of Kimble County, Texas, excluding that part of Kimble County that lies within the boundaries of the Hickory Underground Water District.

SECTION \_\_\_\_\_. FINDING OF BENEFIT. All of the land and other property included within the boundaries of the district will be benefited by the works and projects that are to be accomplished by the district under powers conferred by Section 59, Article XVI, Texas Constitution. The district is created to serve a public use and benefit.

SECTION \_\_\_\_\_. GENERAL POWERS. (a) The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this

state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law that is in conflict or is inconsistent with this part.

(b) Notwithstanding Subsection (a) of this section, the following provisions prevail over a conflicting or inconsistent provision of this part:

- (1) Sections 36.1071-36.108, Water Code;
- (2) Sections 36.159-36.161, Water Code; and
- (3) Subchapter I, Chapter 36, Water Code.

(c) Chapter 49, Water Code, does not apply to the district.

SECTION \_\_\_\_\_. BOARD OF DIRECTORS. (a) The district is governed by a board of five directors.

(b) Temporary directors serve until initial directors are elected under this part.

(c) Initial directors serve until permanent directors are elected under this part.

(d) Permanent directors serve staggered four-year terms.

(e) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(f) A director serves until the director's successor has qualified.

SECTION \_\_\_\_\_. COMPENSATION OF DIRECTORS. A director is not entitled to fees of office but is entitled to reimbursement of actual expenses reasonably and necessarily incurred while engaging in activities on behalf of the district.

SECTION \_\_\_\_\_. TEMPORARY DIRECTORS. (a) The temporary board of directors consists of five members appointed by the Commissioners Court of Kimble County.

(b) If a temporary director fails to qualify for office, the Commissioners Court of Kimble County shall appoint a person to fill the vacancy.

SECTION \_\_\_\_\_. METHOD OF ELECTING DIRECTORS: SINGLE-MEMBER DISTRICTS. (a) The temporary directors shall draw five numbered, single-member districts for electing directors.

(b) For the conduct of an election under the following two sections of this part, the board shall provide for one director to be elected from each of the single-member districts. A director elected from a single-member district represents the residents of that single-member district.

(c) To be qualified to be a candidate for or to serve as director, a person must be a registered voter in the single-member district that the person represents or seeks to represent.

(d) The initial or permanent directors may revise the districts as necessary or appropriate. The board of directors shall revise each single-member district after each federal decennial census to reflect population changes. At the first election after the single-member districts are revised, a new director shall be elected from each district. The directors shall draw lots to determine which two directors serve two-year terms and which three directors serve four-year terms.

SECTION \_\_\_\_\_. CONFIRMATION AND INITIAL DIRECTORS' ELECTION. (a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect initial directors.

(b) At the confirmation and initial directors' election, the temporary board of directors shall have placed on the ballot the name of any candidate filing for an initial director's position and blank spaces to write in the names of other persons. A temporary director who is qualified to be a candidate under the preceding section of this part may file for an initial director's position.

(c) Section 41.001(a), Election Code, does not apply to a confirmation and initial directors' election held as provided by this section.

(d) Except as provided by this section, a confirmation and initial directors' election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

SECTION \_\_\_\_\_. ELECTION OF DIRECTORS. (a) On the first Saturday in May of the first even-numbered year after the year in which the district is authorized to be created at a confirmation election, an election shall be held in the district for the election of three directors to serve four-year terms and two directors to serve two-year terms.

(b) On the first Saturday in May of each subsequent second year following the election, the appropriate number of directors shall be elected.

SECTION \_\_\_\_\_. TAX RATE. The district may not levy a tax to pay any part of bonds or notes issued by the district that exceeds 20 cents on each \$100 of assessed valuation.

SECTION \_\_\_\_\_. EFFECTIVE DATE; EXPIRATION DATE. (a) This part takes effect September 1, 2001.

(b) If the creation of the district is not confirmed at a confirmation election held under this part before September 1, 2003, this part expires on that date.

### **Floor Amendment No. 3 on Third Reading**

Amend **CSSB 2** on third reading in amended Section 1.03, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, in proposed Subdivision (26), by adding new Paragraph (D) wildlife management; and relettering Paragraphs (D) and (E) as Paragraphs (E) and (F).

### **Floor Amendment No. 4 on Third Reading**

Amend **CSSB 2** on third reading in amended Section 36.001(19)(D), Water Code, by striking "and" after the semicolon, adding a new Paragraph (E) wildlife management; and, and relettering Paragraph (E) as Paragraph (F).

### **Floor Amendment No. 5 on Third Reading**

Amend **CSSB 2** on third reading as follows:

1. Add a new SECTION \_\_\_\_ to read as follows:

SECTION \_\_\_\_\_. The Northeast Travis County Utility District.

Section 1. CREATION. (a) A conservation and reclamation district, to be known as the Northeast Travis County Utility District, is created in Travis County, subject to approval at a confirmation election under Section 11 of this Act. The district is a governmental agency and a body politic and corporate.

(b) The district is created under and is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.1

Section 2. DEFINITION. In this Act, "district" means the Northeast Travis County Utility District.

Section 3. BOUNDARIES. The district includes the territory contained within the following areas:

Tract No. 1, approximately 146.50 acres of land out of the E. Kirkland Survey No. 7, in Travis County, Texas, being all of that certain tract conveyed to Kathleen Marie England and Jay Lawrence Johnson by Deeds recorded in Volume 11403,

Page 374, Volume 11618, Page 104, Volume 11861, Page 120 and Volume 12118, Page 195, Real Property Records of Travis County, Texas;2

Tract No. 2, approximately 70.31 acres of land out of the E. Kirkland Survey No. 7 in Travis County, Texas, being all of that certain tract of land conveyed to Charles E. Baker, et ux, by Deed recorded in Volume 7188, Page 1756, Deed Records of Travis County, Texas;

Tract No. 3, approximately 104.34 acres of land out of the G. M. Martin Survey No. 9, Abstract 529, Travis County, Texas, being all of that certain tract called 103.984 acres conveyed to Bernice Becker Zreet, Freida Becker Woodland, Edline Becker McMains, Adolf Becker, Jr., Wilbert Becker and Edwin F. Zreet and Bernice Zreet, Trustees of The Edwin F. and Bernice Zreet Trust dated August 27, 1997, by Deeds recorded in Volume 10215, Page 610, Volume 10537, Page 939, and Volume 13171, Page 102, Real Property Records of Travis County, Texas, and all of that certain tract called 0.356 of one acre conveyed by Muniment of Title recorded in Document No. 71552 of the Travis County Probate Records;

Tract No. 4, approximately 103.266 acres of land out of the George M. Martin Survey No. 9, Abstract 529, Travis County, Texas, being all of that certain tract conveyed to Kermit Hees and wife, Lydia Hees by Partition Deed recorded in Volume 11552, Page 475, Real Property Records of Travis County, Texas, said 103.266 acre tract being the remainder of that tract called 106-1/2 acres conveyed to W. A. Randig by Deed recorded in Volume 498, Page 219, SAVE AND EXCEPT, that portion deeded to Travis County, Texas for highway purposes by Deed recorded in Volume 2268, Page 195, Deed Records of Travis County, Texas;2

Tract No. 5, approximately 177.301 acres of land out of the G. M. Martin Survey in Travis County, Texas, being all of that certain tract of land conveyed to Karolyn P. Graf and Robert L. Pfluger, Trustees of the Lawrence and Willie Mae Pfluger Family Trust by Deeds recorded in Volume 10431, Page 422, Volume 10555, Page 214, and Volume 11091, Page 691, Real Property Records of Travis County, Texas;

Tract No. 6, approximately 107.4 acres of land out of the George M. Martin Survey, Abstract No. 9, and being all of that certain tract of land conveyed to Robert L. Pfluger and Karolyn P. Graf by Deed recorded in Volume 12947, Page 560 and to Robert L. Pfluger, Trustee for Miranda Kimbro and Weston N. Kimbro and Wayne Pfluger, Trustee for Joseph L. Pfluger and Lydia Pfluger, by Deed recorded in Volume 12947, Page 562, Real Property Records of Travis County, Texas;1

Tract No. 7, approximately 9.198 acres of land out of the G. M. Martin Survey, Abstract No. 9, in Travis County, Texas, and being all of that certain tract of land conveyed to Peggy Pfluger and Robert L. Pfluger by Deed recorded in Volume 13049, Page 1353, Real Property Records of Travis County, Texas.

Section 4. FINDINGS RELATIVE TO BOUNDARIES. The legislature finds that the boundaries and field notes of the district form a closure. A mistake in the field notes or in copying the field notes in the legislative process does not affect the organization, existence, or validity of the district, the right of the district to impose taxes, or the legality or operation of the district or its governing body.2

Section 5. FINDING OF BENEFIT. All of the land and other property included within the boundaries of the district will be benefited by the works and projects that are to be accomplished by the district under powers conferred by Section 59, Article XVI, Texas Constitution. The district is created to serve a public use and benefit.

Section 6. GENERAL POWERS. (a) The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state,

including Chapters 30, 49, and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

(b) The rights, powers, privileges, authority, functions, and duties of the district are subject to the continuing right of supervision of the state to be exercised by and through the Texas Natural Resource Conservation Commission.1

Section 7. DIVISION OF DISTRICT. (a) The district may divide into two or more districts as provided by Sections 51.748-51.753, Water Code, and this Section. The proposed district may divide into two or more proposed districts before the establishment of the district is confirmed at the confirmation election held under Section 11.

(b) A district created by division under this Section may divide into two or more districts after the establishment of the district is confirmed at a confirmation election. A proposed district created by division under this Section may divide into two or more proposed districts before the establishment of the district is confirmed at a confirmation election.2

(c) The district or any district resulting from a division of the district may exercise powers under Chapters 49 and 54, Water Code, to annex or exclude property after a confirmation election. The temporary board of the proposed district or of any proposed district resulting from a division of the proposed district may, after a hearing, alter the proposed boundaries of the proposed district before the temporary board orders a confirmation election.

(d) The order creating a district by division under this Section and Sections 51.748-51.753, Water Code, must give the district an appropriate name that does not conflict with the name of any other district. The provisions of Section 51.749(c), Water Code, relating to naming a district, do not apply.1

Section 8. ANNEXATION BY MUNICIPALITY. (a) The district is a water or sewer district as defined by Section 43.071, Local Government Code, for purposes of that Section.1

(b) On annexation of the district by a municipality, the district is dissolved and the municipality shall assume the powers, authority, functions, duties, and outstanding bonded indebtedness of the district.

(c) A municipality that annexes the district must provide full municipal services, as defined by Section 43.056(c), Local Government Code, in the district before the expiration of two and one half years after the effective date of the annexation, unless certain services cannot reasonably be provided within that period and the municipality proposes a schedule for providing those services. If the municipality proposes a schedule to extend the period for providing certain services, the schedule must provide for the provision of full municipal services before the expiration of four and one half years after the effective date of the annexation.

Section 9. BOARD OF DIRECTORS. (a) The district is governed by a board of five directors.

(b) Temporary directors serve until initial directors are elected under Section 11 of this Act.

(c) Initial directors serve until permanent directors are elected under Section 12 of this Act.

(d) Permanent directors serve staggered four-year terms.

(e) Each director must qualify to serve as a director in the manner provided by Section 49.055.1

(f) A director serves until the director's successor has qualified.1

Section 10. TEMPORARY DIRECTORS. (a) The temporary board of directors consists of:

- (1) Chris Fields;
- (2) Nate Nickerson;
- (3) Seth Spiker;
- (4) John Pfluger; and
- (5) Steven Thomas.

(b) The temporary directors are not required to own land or reside in the district.<sup>2</sup>

(c) The temporary directors shall take the oath of office and execute bonds to qualify for holding their offices as soon as possible after the effective date of this Act.<sup>2</sup>

(d) If a temporary director fails to qualify for office, the temporary directors who have qualified shall appoint a person to fill the vacancy. If at any time there are fewer than three qualified temporary directors, the Texas Natural Resource Conservation Commission shall appoint the necessary number of persons to fill all vacancies on the board.

Section 11. CONFIRMATION AND INITIAL DIRECTORS' ELECTION. (a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect five initial directors as provided by Section 49.102, Water Code. The board may submit to the voters propositions to authorize the issuance of bonds, a maintenance tax, and a tax to make payments under a contract.<sup>1</sup>

(b) Section 41.001(a), Election Code, does not apply to an election held under this Section.<sup>1</sup>

Section 12. ELECTION OF DIRECTORS. (a) On the first Saturday in May of the first even-numbered year after the year in which the district is authorized to be created at a confirmation election, a general election shall be held in the district for the election of three directors to serve four-year terms and two directors to serve two-year terms.

(b) On the first Saturday in May of each subsequent second year following the election, the appropriate number of directors shall be elected.<sup>2</sup>

Section 13. FINDINGS RELATING TO PROCEDURAL REQUIREMENTS. (a) The proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and other laws of this state, including the governor, who has submitted the notice and Act to the Texas Natural Resource Conservation Commission.

(b) The Texas Natural Resource Conservation Commission has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(c) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.<sup>1</sup>

Section 14. EFFECTIVE DATE. 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. 6 on Third Reading**

Amend **CSSB 2** on third reading in ARTICLE 3 by adding new PARTS 13-16 to read as follows:

**PART 13. BRAZOS VALLEY GROUNDWATER  
CONSERVATION DISTRICT**

**SECTION 3.1301. RATIFICATION OF CREATION.** The creation by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999 (Senate Bill No. 1911), of the Brazos Valley Groundwater Conservation District in Robertson and Brazos counties is ratified as required by Section 15(a) of that Act, subject to approval at a confirmation election under Section 3.1314 of this article.

**SECTION 3.1302. DEFINITION.** In this article, "district" means the Brazos Valley Groundwater Conservation District.

**SECTION 3.1303. BOUNDARIES.** The boundaries of the district are coextensive with the boundaries of Robertson and Brazos counties, Texas.

**SECTION 3.1304. GENERAL POWERS.** (a) Except as otherwise provided by this article, the district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This article prevails over any provision of general law that is in conflict or inconsistent with this article, including any provision of Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999 (Senate Bill No. 1911).

(b) The district does not have the authority granted by the following provisions of Chapter 36, Water Code:

- (1) Section 36.105, relating to eminent domain; and
- (2) Sections 36.020 and 36.201-36.204, relating to taxes.

**SECTION 3.1305. BONDS.** The district may issue bonds and notes under Sections 36.171-36.181, Water Code, not to exceed \$500,000 of total indebtedness at any time.

**SECTION 3.1306. FEES.** (a) The board of directors of the district by rule may impose reasonable fees on each well for which a permit is issued by the district and which is not exempt from regulation by the district. A fee may be based on the size of column pipe used by the well or on the actual, authorized, or anticipated amount of water to be withdrawn from the well.

(b) The initial fee shall be based on the amount of water to be withdrawn from the well. The initial fee:

- (1) may not exceed:
  - (A) \$0.25 per acre-foot for water used for irrigating agricultural crops or operating existing steam electric stations; or
  - (B) \$0.0425 per thousand gallons for water used for any other purpose; and
- (2) may be increased at a cumulative rate not to exceed three percent per year.

(c) In addition to the fee authorized under Subsection (b) of this section, the district may impose a reasonable fee or surcharge for an export fee using one of the following methods:

- (1) a fee negotiated between the district and the transporter; or
- (2) a combined production and export fee not to exceed 17 cents per thousand gallons for water used.

SECTION 3.1307. EXEMPTIONS. (a) The district may exempt wells under Section 36.117, Water Code, from the requirements to obtain a drilling permit, an operating permit, or any other permit required by Chapter 36, Water Code, or the district's rules.

(b) The district may not require a permit for:

(1) a well used solely for domestic use or for providing water for livestock or poultry on a tract of land larger than 10 acres that is either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;

(2) the drilling of a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the well is located on the same lease or field associated with the drilling rig; or

(3) the drilling of a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from any such well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water.

(c) The district shall not deny the owner of a tract of land, or his lessee, who has no well equipped to produce more than 25,000 gallons a day on the tract, either a permit to drill a well on his land or the privilege to produce groundwater from his land, subject to the rules of the district.

(d) The district may not restrict the production of any well that is exempt from permitting under Subsection (b)(1) of this section.

(e) Notwithstanding Subsection (b) of this section, the district may require a well to be permitted by the district and to comply with all district rules if:

(1) the purpose of a well exempted under Subsection (b)(2) of this section is no longer solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas; or

(2) the withdrawals from a well exempted under Subsection (b)(3) of this section are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code.

(f) An entity holding a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, that authorizes the drilling of a water well shall report monthly to the district:

(1) the total amount of water withdrawn during the month;

(2) the quantity of water necessary for mining activities; and

(3) the quantity of water withdrawn for other purposes.

(g) Notwithstanding Subsection (e) of this section, the district may not require a well exempted under Subsection (b)(3) of this section to comply with the spacing requirements of the district.

(h) The district shall not deny an application for a permit to drill and produce water for hydrocarbon production activities if the application meets the spacing, density, and production rules applicable to all permitted water wells in the district.

(i) A water well exempted under Subsection (a) or (b) of this section may:

(1) be registered in accordance with rules promulgated by the district; and

(2) be equipped and maintained so as to conform to the district's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater

from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.

(j) The district may require the driller of a well exempted under Subsection (a) or (b) of this section to file the drilling log with the district.

(k) A well to supply water for a subdivision of land for which a plat approval is required by Chapter 232, Local Government Code, is not exempted under Subsection (b) of this section.

(l) Groundwater withdrawn from a well exempt from permitting or regulation under this section and subsequently transported outside the boundaries of the district shall be subject to any applicable production and export fees under Section 3.1306 of this article.

(m) This section applies to water wells, including water wells used to supply water for activities related to the exploration or production of hydrocarbons or minerals. This section does not apply to production or injection wells drilled for oil, gas, sulphur, uranium, or brine, or for core tests, or for injection of gas, saltwater, or other fluids, under permits issued by the Railroad Commission of Texas.

**SECTION 3.1308. MITIGATION ASSISTANCE.** In addition to the authority granted under Chapter 36, Water Code, the district may assist in the mediation between landowners regarding the mitigation of the loss of existing groundwater supply of exempt domestic and livestock users due to the groundwater pumping of others.

**SECTION 3.1309. PERMITTING.** The district shall issue permits for wells based on the consideration of whether:

(1) the application conforms to the requirements prescribed by Chapter 36, Water Code, and is accompanied by the prescribed fees;

(2) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;

(3) the proposed use of water is dedicated to any beneficial use;

(4) the proposed use of water is consistent with the district's certified water management plan;

(5) the applicant has agreed to avoid waste and achieve water conservation; and

(6) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

**SECTION 3.1310. REGIONAL COOPERATION.** (a) To provide for regional continuity, the district shall:

(1) participate in a regular annual coordination meeting with other groundwater districts in its designated management area and may hold coordination meetings at other times as needed;

(2) coordinate the collection of data with other groundwater districts in its designated management area in such a way as to achieve relative uniformity of data type and quality;

(3) coordinate efforts to monitor water quality with other groundwater districts in its designated management area, local governments, and state agencies;

(4) provide groundwater level data to other groundwater districts in its designated management area;

(5) investigate any groundwater and aquifer pollution with the intention of locating its source;

(6) notify other groundwater districts in its designated management area and all appropriate agencies of any detected groundwater pollution;

(7) annually provide to other groundwater districts in its designated management area an inventory of water wells and an estimate of groundwater production within the district; and

(8) include other groundwater districts in its designated management area on the mailing lists for district newsletters, seminars, public education events, news articles, and field days.

(b) The district shall prepare a comprehensive management plan as required by Section 36.1071, Water Code covering that district's respective territory. On completion and certification of the plan as required by Section 36.1072, the district shall forward a copy of the new or revised management plan to the other districts in its designated management area. The district shall consider the management plans individually and shall compare them to other management plans in the designated management area.

(1) The district shall, by resolution, call for joint planning with the other districts in the designated management area to review and coordinate the management plans and accomplishments for the designated management area. In reviewing and coordinating the management plans, the boards shall consider:

(A) the goals of each management plan and its impact on planning throughout the management area;

(B) the groundwater management standards of each district describing the desired condition of the groundwater source over time as indicated by indices of quantity of water in the source, quality of water produced from the source, springflows, or subsidence of the land surface;

(C) the groundwater withdrawal rates adopted by each district and the effectiveness of those rates in achieving the groundwater management standard of the district;

(D) the effectiveness of the measures established by each management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the management area generally; and

(E) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management area.

(2) In the management plan the district may establish and coordinate with the other districts within the designated management area an annual total groundwater withdrawal limit and equitable allocation as determined from an evaluation of the overall scientific data of the groundwater resources in the region, including the Texas Water Development Board's groundwater availability model. The determination of sustainable groundwater withdrawal shall be reviewed at least every five years.

(3) Each district participating in the joint planning process initiated under Subsection (b) shall ensure that the groundwater management standards adopted by the district are adequate to protect the groundwater within the area of each district and are not incompatible with the groundwater management standards adopted by the other districts in the management area.

(4) If a joint meeting of the boards of directors is called, the meeting must be held in accordance with Chapter 551, Government Code. Notice of the meeting shall be given in accordance with the requirements for notice of district board of directors meetings under that Act. In addition, notice of the meeting shall be published not later than the 30th day before the date of the scheduled meeting in a newspaper with general circulation in each county in the management area.

(5) A district in the management area may file with good cause a petition with the Texas Natural Resource Conservation Commission requesting an inquiry if the petitioner district adopted a resolution calling for joint planning and the other district or districts refused to join in the planning process or the process failed to result in adequate planning, and the petition provides evidence that:

(A) another district in the management area has failed to adopt rules;

(B) the groundwater in the management area is not adequately protected by the rules adopted by another district; or

(C) the groundwater in the management area is not adequately protected due to the failure of another district to enforce substantial compliance with its rules.

(6) The district may contract to jointly conduct studies or research, or to construct projects, under terms and conditions that the districts consider beneficial with districts located within the same management area or in adjacent management areas. These joint efforts may include studies of groundwater availability and quality, aquifer modeling, and the interaction of groundwater and surface water; educational programs; the purchase and sharing of equipment; and the implementation of projects to make groundwater available, including aquifer recharge, brush control, weather modification, desalination, regionalization, and treatment or conveyance facilities. The districts may contract under their existing authorizations including those of Chapter 791, Government Code, if their contracting authority is not limited by Sections 791.011(c)(2) and (d)(3) and Section 791.014, Government Code.

(c) The district shall determine biennially, using the overall available scientific data of groundwater resources in the Central Carrizo-Wilcox area, whether pumping within the district or an adjacent district is unreasonably affecting groundwater wells. The district, in agreement with other districts within the designated management area, may adopt mitigation measures in response to such unreasonable adverse effects only if the measures are based on a scientific determination made.

(d) The district may assist in the mediation between landowners regarding the mitigation of the loss of existing groundwater supply of exempt domestic and livestock users due to the groundwater pumping of others in adjoining districts.

**SECTION 3.1311. BOARD OF DIRECTORS.** (a) The district is governed by a board of eight directors.

(b) Initial directors serve until permanent directors are appointed under Section 3.1313 of this article and qualified as required by Subsection (d) of this section.

(c) Permanent directors serve four-year staggered terms.

(d) Each director must qualify to serve as a director in the manner provided by Section 36.055, Water Code.

(e) A director serves until the director's successor has qualified.

(f) A director may serve consecutive terms.

(g) If there is a vacancy on the board, the governing body of the entity that appointed the director who vacated the office shall appoint a director to serve the remainder of the term.

(h) Directors are not entitled to receive compensation for serving as a director but may be reimbursed for actual, reasonable expenses incurred in the discharge of official duties.

(i) A majority vote of a quorum is required for board action. If there is a tie vote, the proposed action fails.

SECTION 3.1312. APPOINTMENT OF DIRECTORS. (a) The Robertson County Commissioners Court shall appoint four directors, of whom:

- (1) one must represent municipal interests in the county;
- (2) one must represent agricultural interests in the county;
- (3) one must represent rural water suppliers' interests in the county; and
- (4) one must represent industrial interests in the county.

(b) The Brazos County Commissioners Court shall appoint two directors, of whom:

- (1) one must represent rural water suppliers' interests in the county; and
- (2) one must represent agricultural interests in the county.

(c) The governing body of the City of Bryan, with the approval of the Brazos County Commissioners Court, shall appoint one director.

(d) The governing body of the City of College Station, with the approval of the Brazos County Commissioners Court, shall appoint one director.

(e) Each of the governing bodies authorized by this section to make an appointment shall appoint the appropriate number of initial directors as soon as practicable following the effective date of this Act, but not later than the 45th day after the effective date of this Act.

(f) The four initial directors from Robertson County shall draw lots to determine their terms. Two initial directors from Robertson County and the two initial directors from Brazos County serve terms that expire on January 1 of the second year following the confirmation of the district at an election held under Section 3.1315 of this article. The remaining four initial directors serve terms that expire on January 1 of the fourth year following the confirmation of the district. On January 1 of the second year following confirmation of the district and every two years after that date, the appropriate governing body shall appoint the appropriate number of permanent directors.

SECTION 3.1313. ORGANIZATIONAL MEETING. As soon as practicable after all the initial directors have been appointed and have qualified as provided in this article, a majority of the directors shall convene the organizational meeting of the district at a location within the district agreeable to a majority of the directors. If no location can be agreed on, the organizational meeting of the directors shall be at the Robertson County Courthouse.

SECTION 3.1314. CONFIRMATION ELECTION. (a) The initial board of directors shall call and hold an election on the same date in each county within the district to confirm the creation of the district.

(b) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017, 36.018, and 36.019, Water Code, and Section 41.001, Election Code.

(c) Confirmation of the district requires a vote in favor of confirmation by a majority of the qualified voters voting in the election.

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

#### PART 14. POST OAK SAVANNAH GROUNDWATER CONSERVATION DISTRICT

SECTION 3.1401. CREATION. (a) A groundwater conservation district, to be known as the Post Oak Savannah Groundwater Conservation District, is created in Milam and Burleson counties, subject to approval at a confirmation election under Section 3.1414 of this article. The district is a governmental agency and a body politic and corporate.

(b) The district is created under and is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

SECTION 3.1402. DEFINITION. In this article, "district" means the Post Oak Savannah Groundwater Conservation District.

SECTION 3.1403. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of Milam and Burleson counties.

SECTION 3.1404. FINDING OF BENEFIT. All of the land and other property included within the boundaries of the district will be benefitted by the works and projects that are to be accomplished by the district under powers conferred by Section 59, Article XVI, Texas Constitution. The district is created to serve a public use and benefit.

SECTION 3.1405. GENERAL POWERS. (a) Except as otherwise provided by this article, the district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This article prevails over any provision of general law that is in conflict or inconsistent with this article, including any provision of Chapter 36, Water Code.

(b) The district does not have the authority granted by the following provisions of Chapter 36, Water Code:

- (1) Section 36.105, relating to eminent domain; and
- (2) Sections 36.020 and 36.201-36.204, relating to taxes.

SECTION 3.1406. FEES. (a) The board of directors of the district by rule may impose reasonable fees on each well for which a permit is issued by the district and which is not exempt from regulation by the district. A fee may be based on the size of column pipe used by the well or on the actual, authorized, or anticipated amount of water to be withdrawn from the well.

(b) Fees may not exceed:

- (1) one dollar per acre-foot for water used for irrigating agricultural crops; or
- (2) 17 cents per thousand gallons for water used for any other purpose.

(c) In addition to the fee authorized under Subsection (b) of this section, the district may impose a reasonable fee or surcharge for an export fee using one of the following methods:

- (1) a fee negotiated between the district and the transporter; or
- (2) a combined production and export fee not to exceed 17 cents per thousand gallons for water used.

SECTION 3.1407. EXEMPTIONS. (a) The district may exempt wells under Section 36.117, Water Code, from the requirements to obtain a drilling permit, an operating permit, or any other permit required by Chapter 36, Water Code, or the district's rules.

(b) The district may not require a permit for:

(1) a well used solely for domestic use or for providing water for livestock or poultry on a tract of land larger than 10 acres that is either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;

(2) the drilling of a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is

responsible for drilling and operating the water well and the well is located on the same lease or field associated with the drilling rig; or

(3) the drilling of a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from any such well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water.

(c) The district shall not deny the owner of a tract of land, or his lessee, who has no well equipped to produce more than 25,000 gallons a day on the tract, either a permit to drill a well on his land or the privilege to produce groundwater from his land, subject to the rules of the district.

(d) The district may not restrict the production of any well that is exempt from permitting under Subsection (b)(1) of this section.

(e) Notwithstanding Subsection (b) of this section, the district may require a well to be permitted by the district and to comply with all district rules if:

(1) the purpose of a well exempted under Subsection (b)(2) of this section is no longer solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas; or

(2) the withdrawals from a well exempted under Subsection (b)(3) of this section are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code.

(f) An entity holding a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, that authorizes the drilling of a water well shall report monthly to the district:

- (1) the total amount of water withdrawn during the month;
- (2) the quantity of water necessary for mining activities; and
- (3) the quantity of water withdrawn for other purposes.

(g) Notwithstanding Subsection (e) of this section, a district may not require a well exempted under Subsection (b)(3) of this section to comply with the spacing requirements of the district.

(h) The district shall not deny an application for a permit to drill and produce water for hydrocarbon production activities if the application meets the spacing, density, and production rules applicable to all permitted water wells in the district.

(i) A water well exempted under Subsection (a) or (b) of this section may:

- (1) be registered in accordance with rules promulgated by the district; and
- (2) be equipped and maintained so as to conform to the district's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.

(j) The district may require the driller of a well exempted under Subsection (a) or (b) of this section to file the drilling log with the district.

(k) A well to supply water for a subdivision of land for which a plat approval is required by Chapter 232, Local Government Code, is not exempted under Subsection (b) of this section.

(l) Groundwater withdrawn from a well exempt from permitting or regulation under this section and subsequently transported outside the boundaries of the district

shall be subject to any applicable production and export fees under Section 3.1406 of this article.

(m) This section applies to water wells, including water wells used to supply water for activities related to the exploration or production of hydrocarbons or minerals. This section does not apply to production or injection wells drilled for oil, gas, sulphur, uranium, or brine, or for core tests, or for injection of gas, saltwater, or other fluids, under permits issued by the Railroad Commission of Texas.

SECTION 3.1408. MITIGATION ASSISTANCE. In addition to the authority granted under Chapter 36, Water Code, the district may assist in the mediation between landowners regarding the mitigation of the loss of existing groundwater supply of exempt domestic and livestock users due to the groundwater pumping of others.

SECTION 3.1409. PERMITTING. The district shall issue permits for wells based on the consideration of whether:

(1) the application conforms to the requirements prescribed by Chapter 36, Water Code, and is accompanied by the prescribed fees;

(2) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;

(3) the proposed use of water is dedicated to any beneficial use;

(4) the proposed use of water is consistent with the district's certified water management plan;

(5) the applicant has agreed to avoid waste and achieve water conservation; and

(6) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

SECTION 3.1410. REGIONAL COOPERATION. (a) To provide for regional continuity, the district shall:

(1) participate in a regular annual coordination meeting with other groundwater districts in its designated management area and may hold coordination meetings at other times as needed;

(2) coordinate the collection of data with other groundwater districts in its designated management area in such a way as to achieve relative uniformity of data type and quality;

(3) coordinate efforts to monitor water quality with other groundwater districts in its designated management area, local governments, and state agencies;

(4) provide groundwater level data to other groundwater districts in its designated management area;

(5) investigate any groundwater and aquifer pollution with the intention of locating its source;

(6) notify other groundwater districts in its designated management area and all appropriate agencies of any detected groundwater pollution;

(7) annually provide to other groundwater districts in its designated management area an inventory of water wells and an estimate of groundwater production within the district; and

(8) include other groundwater districts in its designated management area on the mailing lists for district newsletters, seminars, public education events, news articles, and field days.

(b) The district shall prepare a comprehensive management plan as required by Section 36.1071, Water Code covering that district's respective territory. On

completion and certification of the plan as required by Section 36.1072, the district shall forward a copy of the new or revised management plan to the other districts in its designated management area. The district shall consider the management plans individually and shall compare them to other management plans in the designated management area.

(1) The district shall, by resolution, call for joint planning with the other districts in the designated management area to review and coordinate the management plans and accomplishments for the designated management area. In reviewing and coordinating the management plans, the boards shall consider:

(A) the goals of each management plan and its impact on planning throughout the management area;

(B) the groundwater management standards of each district describing the desired condition of the groundwater source over time as indicated by indices of quantity of water in the source, quality of water produced from the source, springflows, or subsidence of the land surface;

(C) the groundwater withdrawal rates adopted by each district and the effectiveness of those rates in achieving the groundwater management standard of the district;

(D) the effectiveness of the measures established by each management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the management area generally; and

(E) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management area.

(2) In the management plan the district may establish and coordinate with the other districts within the designated management area an annual total groundwater withdrawal limit and equitable allocation as determined from an evaluation of the overall scientific data of the groundwater resources in the region, including the Texas Water Development Board's groundwater availability model. The determination of sustainable groundwater withdrawal shall be reviewed at least every five years.

(3) Each district participating in the joint planning process initiated under Subsection (b) shall ensure that the groundwater management standards adopted by the district are adequate to protect the groundwater within the area of each district and are not incompatible with the groundwater management standards adopted by the other districts in the management area.

(4) If a joint meeting of the boards of directors is called, the meeting must be held in accordance with Chapter 551, Government Code. Notice of the meeting shall be given in accordance with the requirements for notice of district board of directors meetings under that Act. In addition, notice of the meeting shall be published not later than the 30th day before the date of the scheduled meeting in a newspaper with general circulation in each county in the management area.

(5) A district in the management area may file with good cause a petition with the Texas Natural Resource Conservation Commission requesting an inquiry if the petitioner district adopted a resolution calling for joint planning and the other district or districts refused to join in the planning process or the process failed to result in adequate planning, and the petition provides evidence that:

(A) another district in the management area has failed to adopt rules;

(B) the groundwater in the management area is not adequately protected by the rules adopted by another district; or

(C) the groundwater in the management area is not adequately protected due to the failure of another district to enforce substantial compliance with its rules.

(6) The district may contract to jointly conduct studies or research, or to construct projects, under terms and conditions that the districts consider beneficial with districts located within the same management area or in adjacent management areas. These joint efforts may include studies of groundwater availability and quality, aquifer modeling, and the interaction of groundwater and surface water; educational programs; the purchase and sharing of equipment; and the implementation of projects to make groundwater available, including aquifer recharge, brush control, weather modification, desalination, regionalization, and treatment or conveyance facilities. The districts may contract under their existing authorizations including those of Chapter 791, Government Code, if their contracting authority is not limited by Sections 791.011(c)(2) and (d)(3) and Section 791.014, Government Code.

(c) The district shall determine biennially, using the overall available scientific data of groundwater resources in the Central Carrizo-Wilcox area, whether pumping within the district or an adjacent district is unreasonably affecting groundwater wells. The district, in agreement with other districts within the designated management area, may adopt mitigation measures in response to such unreasonable adverse effects only if the measures are based on a scientific determination made.

(d) The district may assist in the mediation between landowners regarding the mitigation of the loss of existing groundwater supply of exempt domestic and livestock users due to the groundwater pumping of others in adjoining districts.

SECTION 3.1411. BOARD OF DIRECTORS. (a) The district is governed by a board of 10 directors.

(b) Initial directors serve until permanent directors are appointed under Section 3.1412 of this article and qualified as required by Subsection (d) of this section.

(c) Permanent directors serve four-year staggered terms.

(d) Each director must qualify to serve as a director in the manner provided by Section 36.055, Water Code.

(e) A director serves until the director's successor has qualified.

(f) A director may serve consecutive terms.

(g) If there is a vacancy on the board, the governing body of the entity that appointed the director who vacated the office shall appoint a director to serve the remainder of the term.

(h) Directors are not entitled to receive compensation for serving as a director but may be reimbursed for actual, reasonable expenses incurred in the discharge of official duties.

(i) A quorum exists when at least two-thirds of the board members are present. A majority vote of a quorum is required for board action. If there is a tie vote, the proposed action fails.

SECTION 3.1412. APPOINTMENT OF DIRECTORS. (a) The Milam County Commissioners Court shall appoint five directors, of whom:

- (1) one must represent municipal interests in the county;
- (2) one must represent agricultural interests in the county;
- (3) one must represent rural water suppliers' interests in the county;
- (4) one must represent industrial interests in the county; and
- (5) one must represent the interests of the county at large.

(b) The Burleson County Commissioners Court shall appoint five directors, of whom:

- (1) one must represent municipal interests in the county;
- (2) one must represent agricultural interests in the county;
- (3) one must represent rural water suppliers' interests in the county;
- (4) one must represent industrial interests in the county; and
- (5) one must represent the interests of the county at large.

(c) Each of the governing bodies authorized by this section to make an appointment shall appoint the appropriate number of initial directors as soon as practicable following the effective date of this Act, but not later than the 45th day after the effective date of this Act.

(d) The initial directors shall draw lots to determine their terms. Two initial directors from Milam County and two initial directors from Burleson County serve terms that expire on January 1 of the second year following the confirmation of the district at an election held under 3.1414 of this article. The remaining six initial directors serve terms that expire on January 1 of the fourth year following the confirmation of the district. On January 1 of the second year following confirmation of the district and every two years after that date, the appropriate commissioners court shall appoint the appropriate number of permanent directors.

**SECTION 3.1413. ORGANIZATIONAL MEETING.** As soon as practicable after all the initial directors have been appointed and have qualified as provided in this article, a majority of the directors shall convene the organizational meeting of the district at a location within the district agreeable to a majority of the directors. If no location can be agreed on, the organizational meeting of the directors shall be at the Milam County Courthouse.

**SECTION 3.1414. CONFIRMATION ELECTION.** (a) The initial board of directors shall call and hold an election on the same date in each county within the district to confirm the creation of the district.

(b) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017, 36.018, and 36.019, Water Code, and Section 41.001, Election Code.

(c) If the majority of qualified voters in a county who vote in the election vote to confirm the creation of the district, that county is included in the district.

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

#### **PART 15. MID-EAST TEXAS GROUNDWATER CONSERVATION DISTRICT**

**SECTION 3.1501. CREATION.** (a) A groundwater conservation district, to be known as the Mid-East Texas Groundwater Conservation District, is created in Leon, Madison, and Freestone counties, subject to approval at a confirmation election under Section 3.1514 of this article. The district is a governmental agency and a body politic and corporate.

(b) The district is created under and is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

**SECTION 3.1502. DEFINITION.** In this article, "district" means the Mid-East Texas Groundwater Conservation District.

**SECTION 3.1503. BOUNDARIES.** The boundaries of the district are coextensive with the boundaries of Leon, Madison, and Freestone counties.

SECTION 3.1504. FINDING OF BENEFIT. All of the land and other property included within the boundaries of the district will be benefitted by the works and projects that are to be accomplished by the district under powers conferred by Section 59, Article XVI, Texas Constitution. The district is created to serve a public use and benefit.

SECTION 3.1505. GENERAL POWERS. (a) Except as otherwise provided by this article, the district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This article prevails over any provision of general law that is in conflict or inconsistent with this article, including any provision of Chapter 36, Water Code.

(b) The district does not have the authority granted by the following provisions of Chapter 36, Water Code:

- (1) Section 36.105, relating to eminent domain; and
- (2) Sections 36.020 and 36.201-36.204, relating to taxes.

SECTION 3.1506. FEES. (a) The board of directors of the district by rule may impose reasonable fees on each well for which a permit is issued by the district and which is not exempt from regulation by the district. A fee may be based on the size of column pipe used by the well or on the actual, authorized, or anticipated amount of water to be withdrawn from the well.

(b) Fees may not exceed:

- (1) one dollar per acre-foot for water used for irrigating agricultural crops; or
- (2) 17 cents per thousand gallons for water used for any other purpose.

(c) In addition to the fee authorized under Subsection (b) of this section, the district may impose a reasonable fee or surcharge for an export fee using one of the following methods:

- (1) a fee negotiated between the district and the transporter; or
- (2) a combined production and export fee not to exceed 17 cents per thousand gallons for water used.

SECTION 3.1507. EXEMPTIONS. (a) The district may exempt wells under Section 36.117, Water Code, from the requirements to obtain a drilling permit, an operating permit, or any other permit required by Chapter 36, Water Code, or the district's rules.

(b) The district may not require a permit for:

(1) a well used solely for domestic use or for providing water for livestock or poultry on a tract of land larger than 10 acres that is either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;

(2) the drilling of a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the well is located on the same lease or field associated with the drilling rig; or

(3) the drilling of a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from any such well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water.

(c) The district shall not deny the owner of a tract of land, or his lessee, who has no well equipped to produce more than 25,000 gallons a day on the tract, either a permit to drill a well on his land or the privilege to produce groundwater from his land, subject to the rules of the district.

(d) The district may not restrict the production of any well that is exempt from permitting under Subsection (b)(1) of this section.

(e) Notwithstanding Subsection (b) of this section, the district may require a well to be permitted by the district and to comply with all district rules if:

(1) the purpose of a well exempted under Subsection (b)(2) of this section is no longer solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas; or

(2) the withdrawals from a well exempted under Subsection (b)(3) of this section are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code.

(f) An entity holding a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, that authorizes the drilling of a water well shall report monthly to the district:

(1) the total amount of water withdrawn during the month;

(2) the quantity of water necessary for mining activities; and

(3) the quantity of water withdrawn for other purposes.

(g) Notwithstanding Subsection (e) of this section, the district may not require a well exempted under Subsection (b)(3) of this section to comply with the spacing requirements of the district.

(h) The district shall not deny an application for a permit to drill and produce water for hydrocarbon production activities if the application meets the spacing, density, and production rules applicable to all permitted water wells in the district.

(i) A water well exempted under Subsection (a) or (b) of this section may:

(1) be registered in accordance with rules promulgated by the district; and

(2) be equipped and maintained so as to conform to the district's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.

(j) The district may require the driller of a well exempted under Subsection (a) or (b) of this section to file the drilling log with the district.

(k) A well to supply water for a subdivision of land for which a plat approval is required by Chapter 232, Local Government Code, is not exempted under Subsection (b) of this section.

(l) Groundwater withdrawn from a well exempt from permitting or regulation under this section and subsequently transported outside the boundaries of the district shall be subject to any applicable production and export fees under Section 3.1506 of this article.

(m) This section applies to water wells, including water wells used to supply water for activities related to the exploration or production of hydrocarbons or minerals. This section does not apply to production or injection wells drilled for oil, gas, sulphur, uranium, or brine, or for core tests, or for injection of gas, saltwater, or other fluids, under permits issued by the Railroad Commission of Texas.

SECTION 3.1508. MITIGATION ASSISTANCE. In addition to the authority granted under Chapter 36, Water Code, the district may assist in the mediation between

landowners regarding the mitigation of the loss of existing groundwater supply of exempt domestic and livestock users due to the groundwater pumping of others.

SECTION 3.1509. PERMITTING. The district shall issue permits for wells based on the consideration of whether:

(1) the application conforms to the requirements prescribed by Chapter 36, Water Code, and is accompanied by the prescribed fees;

(2) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;

(3) the proposed use of water is dedicated to any beneficial use;

(4) the proposed use of water is consistent with the district's certified water management plan;

(5) the applicant has agreed to avoid waste and achieve water conservation; and

(6) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

SECTION 3.1510. REGIONAL COOPERATION. (a) To provide for regional continuity, the district shall:

(1) participate in a regular annual coordination meeting with other groundwater districts in its designated management area and may hold coordination meetings at other times as needed;

(2) coordinate the collection of data with other groundwater districts in its designated management area in such a way as to achieve relative uniformity of data type and quality;

(3) coordinate efforts to monitor water quality with other groundwater districts in its designated management area, local governments, and state agencies;

(4) provide groundwater level data to other groundwater districts in its designated management area;

(5) investigate any groundwater and aquifer pollution with the intention of locating its source;

(6) notify other groundwater districts in its designated management area and all appropriate agencies of any detected groundwater pollution;

(7) annually provide to other groundwater districts in its designated management area an inventory of water wells and an estimate of groundwater production within the district; and

(8) include other groundwater districts in its designated management area on the mailing lists for district newsletters, seminars, public education events, news articles, and field days.

(b) The district shall prepare a comprehensive management plan as required by Section 36.1071, Water Code covering that district's respective territory. On completion and certification of the plan as required by Section 36.1072, the district shall forward a copy of the new or revised management plan to the other districts in its designated management area. The district shall consider the management plans individually and shall compare them to other management plans in the designated management area.

(1) The district shall, by resolution, call for joint planning with the other districts in the designated management area to review and coordinate the management plans and accomplishments for the designated management area. In reviewing and coordinating the management plans, the boards shall consider:

(A) the goals of each management plan and its impact on planning throughout the management area;

(B) the groundwater management standards of each district describing the desired condition of the groundwater source over time as indicated by indices of

quantity of water in the source, quality of water produced from the source, springflows, or subsidence of the land surface;

(C) the groundwater withdrawal rates adopted by each district and the effectiveness of those rates in achieving the groundwater management standard of the district;

(D) the effectiveness of the measures established by each management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the management area generally; and

(E) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management area.

(2) In the management plan the district may establish and coordinate with the other districts within the designated management area an annual total groundwater withdrawal limit and equitable allocation as determined from an evaluation of the overall scientific data of the groundwater resources in the region, including the Texas Water Development Board's groundwater availability model. The determination of sustainable groundwater withdrawal shall be reviewed at least every five years.

(3) Each district participating in the joint planning process initiated under Subsection (b) shall ensure that the groundwater management standards adopted by the district are adequate to protect the groundwater within the area of each district and are not incompatible with the groundwater management standards adopted by the other districts in the management area.

(4) If a joint meeting of the boards of directors is called, the meeting must be held in accordance with Chapter 551, Government Code. Notice of the meeting shall be given in accordance with the requirements for notice of district board of directors meetings under that Act. In addition, notice of the meeting shall be published not later than the 30th day before the date of the scheduled meeting in a newspaper with general circulation in each county in the management area.

(5) A district in the management area may file with good cause a petition with the Texas Natural Resource Conservation Commission requesting an inquiry if the petitioner district adopted a resolution calling for joint planning and the other district or districts refused to join in the planning process or the process failed to result in adequate planning, and the petition provides evidence that:

(A) another district in the management area has failed to adopt rules;

(B) the groundwater in the management area is not adequately protected by the rules adopted by another district; or

(C) the groundwater in the management area is not adequately protected due to the failure of another district to enforce substantial compliance with its rules.

(6) The district may contract to jointly conduct studies or research, or to construct projects, under terms and conditions that the districts consider beneficial with districts located within the same management area or in adjacent management areas. These joint efforts may include studies of groundwater availability and quality, aquifer modeling, and the interaction of groundwater and surface water; educational programs; the purchase and sharing of equipment; and the implementation of projects to make groundwater available, including aquifer recharge, brush control, weather modification, desalination, regionalization, and treatment or conveyance facilities. The districts may contract under their existing authorizations including those of Chapter 791, Government Code, if their contracting authority is not limited by Sections 791.011(c)(2) and (d)(3) and Section 791.014, Government Code.

(c) The district shall determine biennially, using the overall available scientific data of groundwater resources in the Central Carrizo-Wilcox area, whether pumping

within the district or an adjacent district is unreasonably affecting groundwater wells. The district, in agreement with other districts within the designated management area, may adopt mitigation measures in response to such unreasonable adverse effects only if the measures are based on a scientific determination made.

(d) The district may assist in the mediation between landowners regarding the mitigation of the loss of existing groundwater supply of exempt domestic and livestock users due to the groundwater pumping of others in adjoining districts.

**SECTION 3.1511. BOARD OF DIRECTORS.** (a) The district is governed by a board of nine directors.

(b) Initial directors serve until permanent directors are appointed under Section 3.1512 of this article and qualified as required by Subsection (d) of this section.

(c) Permanent directors serve four-year staggered terms.

(d) Each director must qualify to serve as a director in the manner provided by Section 36.055, Water Code.

(e) A director serves until the director's successor has qualified.

(f) A director may serve consecutive terms.

(g) If there is a vacancy on the board, the governing body of the entity that appointed the director who vacated the office shall appoint a director to serve the remainder of the term.

(h) Directors are not entitled to receive compensation for serving as a director but may be reimbursed for actual, reasonable expenses incurred in the discharge of official duties.

(i) A majority vote of a quorum is required for board action. If there is a tie vote, the proposed action fails.

**SECTION 3.1512. APPOINTMENT OF DIRECTORS.** (a) The Leon County Commissioners Court shall appoint three directors, of whom:

(1) one must represent the interests of rural water suppliers or municipalities in the county, or both;

(2) one must represent agricultural interests in the county; and

(3) one must represent industrial interests in the county.

(b) The Madison County Commissioners Court shall appoint three directors, of whom:

(1) one must represent the interests of rural water suppliers or municipalities in the county, or both;

(2) one must represent agricultural interests in the county; and

(3) one must represent industrial interests in the county.

(c) The Freestone County Commissioners Court shall appoint three directors, of whom:

(1) one must represent the interests of rural water suppliers or municipalities in the county, or both;

(2) one must represent agricultural interests in the county; and

(3) one must represent industrial interests in the county.

(d) Each of the governing bodies authorized by this section to make an appointment shall appoint the appropriate number of initial directors as soon as practicable following the effective date of this Act, but not later than the 45th day after the effective date of this Act.

(e) The initial directors shall draw lots to determine their terms. A simple majority of the initial directors, if an odd number of initial directors are appointed, or half the initial directors, if an even number of initial directors are appointed, serve terms that expire on January 1 of the fourth year following the confirmation of the

district at an election held under Section 3.1514 of this article. The remaining initial directors serve terms that expire on January 1 of the second year following the confirmation of the district. On January 1 of the second year following confirmation of the district and every two years after that date, the appropriate commissioners courts shall appoint the appropriate number of permanent directors.

**SECTION 3.1513. ORGANIZATIONAL MEETING.** As soon as practicable after all the initial directors have been appointed and have qualified as provided by this article, a majority of the directors shall convene the organizational meeting of the district at a location within the district agreeable to a majority of the directors. If no location can be agreed on, the organizational meeting of the directors shall be at the Leon County Courthouse.

**SECTION 3.1514. CONFIRMATION ELECTION.** (a) The initial board of directors shall call and hold an election on the same date in each county within the district to confirm the creation of the district.

(b) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017, 36.018, and 36.019, Water Code, and Section 41.001, Election Code.

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

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

#### **Floor Amendment No. 8 on Third Reading**

Amend **CSSB 2** on third reading by amending 2nd Reading Floor Amendment No. 34 to **CSSB 2** as follows:

(1) On page 8, line 11 between "Act" and the period, insert the following: "; provided, however, that this Act does not apply to a retail public utility for which a final order in any rate proceeding has been issued by the Texas Natural Resource Conservation Commission prior to January 1, 2001."

#### **Floor Amendment No. 10 on Third Reading**

Amend **CSSB 2** on third reading as follows:

In Section 6.01 of the bill, Section 1.115(b), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, by adding:

The authority also shall publish notice on its Internet website.

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 2** 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; Armbrister, Bernsen, Bivins, and Haywood.

**SENATE RESOLUTION 1131**

Senator Gallegos offered the following resolution:

WHEREAS, It is with great pleasure that the Texas Senate recognize Edward D. Garza, who was elected on Cinco de Mayo of this year to serve as Mayor of San Antonio, the ninth largest city in the nation; and

WHEREAS, Ed Garza is a native San Antonian; he attended The University of Texas at Austin, where he studied business administration for two years; he later transferred to and graduated from Texas A&M, where he received a bachelor of landscape architecture degree and a master of science degree in land development; he is also an adjunct professor at Saint Mary's University; and

WHEREAS, Mayor Garza began his political career serving as an administrative and legislative assistant to current Senator Mario Gallegos while he served in the House of Representatives and again as a member of the Texas Senate; Ed Garza also worked for the late United States Congressman Frank Tejeda; and

WHEREAS, Ed Garza has been a recognized leader in numerous community and civic organizations since 1987; he was first elected into office in 1997 as a member of the San Antonio City Council and was re-elected to a second term in 1999; among his council accomplishments include his leading the charge for fluoride in the water and inner city revitalization; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby recognize this remarkable young mayor and wish him the very best as he continues to serve the good people of San Antonio; and, be it further

RESOLVED, That a copy of this Resolution be presented to him as an expression of high regard from the Texas Senate.

The resolution was read.

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

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

**REMARKS ORDERED PRINTED**

On motion of Senator Truan and by unanimous consent, the following remarks regarding **SR 1131** were ordered reduced to writing and printed in the *Senate Journal*:

**Senator Zaffirini:** Thank you Mr. President. Mr. President and Members, it's our pleasure as a Bexar County delegation to join Senator Mario Gallegos in welcoming Ed Garza to the Texas Senate, the newly elected Mayor of San Antonio. You heard the resolution and you heard a wonderful expression of how important his election is. We look to Ed Garza for outstanding leadership, not only for the City of San Antonio, but for the entire State of Texas. We also know that because he is bilingual, biliterate, bicultural, that he will play a significant role in improving Texas-Mexico relationships, and, particularly, strengthening the relationship between San Antonio and other cities throughout the border region. The City of San Antonio under Ed Garza's leadership will develop and meet new standards of excellence. And I believe that by the end of his first term as Mayor of San Antonio, people will agree that Ed Garza will have been a significant leader, not only for San Antonio, but for the

border region and will be held as the best Mayor San Antonio has ever had. Congratulations, Ed Garza, *bienvenido al Senado de Tejas*. Thank you Mr. President and Members.

**Senator Van de Putte:** Thank you Mr. President. Members, I join my Senate colleague, Senator Gallegos, in welcoming again to the Texas Senate, Ed Garza. I had the honor and privilege of being close to his family. In fact, I worked with his dad over twenty-some-odd years ago when I was a beginning pharmacist in San Antonio. Ed and I went to the same high school, although I have to say, Ed, you went many, many years later. He has always been a supporter and an advocate for neighborhoods, and I was so pleased as his enthusiasm helped me in a very difficult campaign that I had in 1993. Ed, just six years ago, was a Senate staffer, and I want all of you in the gallery and those behind the rail to understand what can happen to your lives in six years if you set those goals. He has, first and foremost, put the people in the neighborhoods and community of San Antonio and South Texas first. He came to the Legislature as a staffer to my colleague, Senator Gallegos, returned to San Antonio elected from the council district where I live very, very close to, and served four years as a council member. Ed Garza won this last election on Cinco de Mayo with the overwhelming support, not only of the Hispanic population of the City of San Antonio, but for the first time, marked a significant event in the history of our city, in which a Hispanic candidate also carried the non-Hispanic areas of the City of San Antonio. I welcome Ed and I know that you are a great leader. You're a wonderful example and when I look at you I think, so young, so much potential that's already been reached. Part, I know, of your success has been in the knowledge that you understand so very well the working relationships between our state legislature and our local elected officials. I know you will carry that with you. We are so proud of you in San Antonio, and, Members, I am so proud that Ed Garza, the new Mayor, is a constituent. We both live in the same neighborhood where we grew up. I live about a block and a half from where I grew up. Ed lives about three or four blocks from where he grew up. He stayed in the neighborhood and has made San Antonio very proud. Ed, welcome and *buena suerte*, you are going to be a great leader for our state.

**Senator Wentworth:** Mr. President, I apologize for being off the floor out in the rotunda area talking to very important people representing interests in Texas. So, I haven't heard everything being said about Ed Garza, but if it hasn't already been said, I want to make sure everybody understands Henry Cisneros was the first modern-day Hispanic Mayor in San Antonio who graduated from Texas A&M University, and Ed Garza is the second modern-day Hispanic Mayor who also graduated from Texas A&M University. So, I think we've discovered the formula for success, at least for Hispanic candidates for Mayor of San Antonio, that's, you have to be a Texas Aggie. Congratulations, Mr. Mayor.

**Senator Madla:** Thank you Mr. President. Members, I'll be brief. I, too, want to welcome Mayor Garza to the Texas Senate. I guess my relation with the Mayor is a little different than most Members', and that's because Harold Oliver, who's one of my legislative assistants, is probably one of his closest allies, and I know how hard and difficult they worked in the election. Obviously, Mayor Garza represents a new generation of San Antonians who are coming to the political front. Those individuals who are as old as Jeff and I are, are, kind of, you know, riding into the sunset sometime in the near future. But, I think what's really impressive about the election that just took

place in San Antonio is that Mayor Garza did something that a lot of Hispanic elected officials have not done, and that is, he took his message to all of San Antonio. He didn't campaign only among the Hispanics, but he took his message to every San Antonian and, obviously, the results show that the people of San Antonio don't really care whether you're a Hispanic, an African American, Anglo, it doesn't matter, if you have a good message. They just gave a very resounding victory to Ed, saying, we like your message, and, Ed, I just want to say congratulations to you.

**Senator Barrientos:** Mr. President. Members, I rise to join my voice with those of my colleagues as the Chairman of the Senate Democratic Caucus, as the Senator from the district of Travis, I want to welcome Senator Mario Gallegos' intern to the Texas Senate. Edward D. Garza, you should be proud, and the people are proud of you, as you have heard. For, you see, you have the best of all worlds. Now and again, we have a young man or a young woman who is well prepared. When I say the best of all worlds: The University of Texas at Austin; bachelor's, master's, Texas A&M; now an adjunct professor at Saint Mary's University. And, very briefly, I know how it feels inside to be elected from that region. You see, Mayor, I was first elected with 10 percent Hispanics in my district and now with 18 percent Hispanics in my district, for we are showing that, regardless of color, gender, rich or poor, all of us can represent across the board. That's what I'm so proud of, you and the future of Texas.

**Senator West:** I, too, rise, Mayor Garza, and say congratulations. But Mr. President and Members and citizens in the gallery, I want you to look at this man, this Mayor: here lies the future of Texas in terms of leadership. Here's a person that's done all of the things that have been asked of him in terms of preparation for leadership. He represents another generation of leaders in the State of Texas, a generation, Members, yes, a generation behind us, most of us. The question is, what will you do with the responsibilities that have been entrusted in you, not only for the great City of San Antonio, Mayor Garza, but for the State of Texas. I know that I will be watching, working with you, and at one point in my career, probably in a rocking chair, in terms of what your generation and what you will do as a leader of your generation to build coalitions that are based on interest. I know that you have what it takes. I'm very supportive of the things that you've done in the past and know I will be supportive of the things that you will do in the future. But remember, keep Texas whole. Do what's in the best interest of, not only the City of San Antonio, but what will, in the future, be in the best interest of the State of Texas. Congratulations and much success.

**Senator Lucio:** Thank you Mr. President. I, too, rise to join my colleague, Senator Gallegos, and others who have spoken very eloquently to congratulate the new Mayor from San Antonio. As we say in Spanish, *tocayo*, Edward Garza. I think, and I should say that I've been talking about century 21 leadership, and, obviously, you typify that very well. The people of Texas, the people, not only in the Hispanic community, the people of Texas, will be looking at San Antonio. They love San Antonio and they're going to be looking at the leadership in San Antonio, what is going to make that city go in the future, and, obviously, you are going to be the engine to make sure that it goes in the right direction. Congratulations to you and the best of luck.

**Senator Armbrister:** Thank you Mr. President. Ladies, Members, and men of the Senate, let me share with you just a short story about Ed that told me something about

the character of the man. You know, those of us that represent predominantly rural Texas, we rail against cities like San Antonio and Dallas and Houston and this great city that we're in and even El Paso, Eliot, because of their largeness, their size, and everything else, and sometimes on those issues, we get forgotten. But during the campaign for position of Mayor in San Antonio, a young man called me and said, listen, I would sure like to come up—never mentioned at all that he had ever worked up here—just to visit with you a little bit and to get your input on my race for Mayor. Well, I was kind of impressed with that, because one of the things that we not only fear about the big cities, but we know about the big city, is that whatever happens, good or bad, reflects good or bad to the rural parts of Texas as well. Here was a young man that took time out of a very hectic campaign to travel to Austin, to sit down with a guy from Victoria, to try to get some input about if he is successful in his race, what should he do. I knew right then that this young man had a vision, for not only his great city, but for all of the surrounding counties as well. I think I told him that day that he was going to win the race—there's just a feel that you get about candidates in races—and wished him well. But that has always stuck with me. I joined my colleagues on the night of the election, watching the returns, to see how it was going to come out. Ed, you are what is great about Texas. You do understand that as Mayor of one of our state's largest and greatest cities, that it's more than just that city that you have a role to play in. I, for one, appreciate you taking time out of that busy schedule of campaigning to come and get input about things that concern all of the entire region. I appreciate you doing that and look forward to continued relationship on those levels.

**Senator Truan:** Thank you very much Mr. President. Members, I join with all of you, Members, in recognizing the success of a young man who obviously has a tremendous future in our State of Texas. I also join with those that made reference to what he represents, our young people, who we owe an opportunity for involvement and participation, because I think it's the foundation for our democracy in general and our State of Texas in particular. I remember when I first met another young man who was in his senior year at A&M and wearing his boots, and I was told that he was destined to greatness and that was Henry Cisneros. I go to San Antonio quite a bit. I've been going there and I have some business interests there and I have a lot of friends and relatives. I was told about Edward Garza, and I am not completely surprised that he would be elected Mayor of the City of San Antonio. I think that it's quite a coincidence, but quite ironic at the same time, that three major cities of the state, Houston, Dallas, and now San Antonio, are headed by people that are identified as members of a minority, ethnic, racial, and, of course, as we know from the census, and as we are grappling with redistricting, we have evidence here of the opportunity that people in the State of Texas are giving to all of us, regardless of our ethnic or racial or sex. I think that you, Mayor, represent the future of our state and our country. I wish you well, and I can assure you that San Antonio is leading the way in South Texas and the border for a lot of things that need to be done, and with your leadership San Antonio can help us throughout the state as well. Congratulations, best wishes, and Godspeed to a very successful tenure as Mayor of the City of San Antonio.

**Senator Gallegos:** Thank you Mr. President. I don't know what I can say else that's already been said. I will tell you, Mr. President, that when we were in the finance committee last session, when I took those \$50 million from San Antonio, you know who Leticia sent to come get it back. But, let me just say to him, not only my colleagues

here, but also staff, I mean really this young man belongs to y'all because he has been there at the staff level. Even when the *New York Times* called me two years ago and asked me about Ed, I said I know he's going places, I just didn't know that he was going to go this fast. And to be the youngest Mayor of the ninth largest city in the country is unbelievable, and, yes, he is, Senator Madla, of the new generation of leadership that's coming in. So, other than what's been said, it's been an honor to have Ed work for me. Now, I don't know whether to carry his bags, Mr. President, or what I need to do, but it's been an honor to have Ed work for me, and it's been an honor for him to be part of the Texas Senate family. My colleagues, help me welcome the new Mayor of San Antonio, Ed Garza.

**President Ratliff:** Mayor, we're proud that you are a product of the Texas Senate.

### CONFERENCE COMMITTEE ON HOUSE BILL 1922

Senator Duncan 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 1922** 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 1922** 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 Duncan, Chair; Carona, Nelson, West, and Madla.

(Senator Brown in Chair)

### SENATE BILL 450 WITH HOUSE AMENDMENT

Senator Duncan called **SB 450** from the President's table for consideration of the House amendment to the bill.

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

#### Floor Amendment No. 1

Amend **SB 450** (house committee report) as follows:

(1) In the introductory language to SECTION 1 of the bill (page 1, lines 5 and 6), strike "Subsection (b), Section 42.005, Education Code, is amended" and substitute "Section 42.005, Education Code, is amended by amending Subsection (b) and adding Subsections (e) and (f)".

(2) In SECTION 1 of the bill, strike amended Subdivision (2), Subsection (b), Section 42.005, Education Code (page 1, lines 13-19) and substitute the following:

(2) subject to Subsection (e), an average daily attendance not to exceed 98 percent of the actual average daily attendance of the preceding school year, if the decline is not the result of the closing or reduction in personnel of a military base [shall be funded on the basis of the actual average daily attendance of the preceding school year].

(3) Between SECTIONS 1 and 2 of the bill (page 1, between lines 19 and 20), insert the following:

(e) For each school year, the commissioner shall adjust the average daily attendance of school districts that are entitled to funding on the basis of an adjusted average daily attendance under Subsection (b)(2) so that:

(1) all districts are funded on the basis of the same percentage of the preceding year's actual average daily attendance; and

(2) the total cost to the state does not exceed the amount specifically appropriated for that year for purposes of Subsection (b)(2).

(f) An open-enrollment charter school is not entitled to funding based on an adjustment under Subsection (b)(2).

The amendment was read.

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

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 450** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Duncan, Chair; Bivins, Van de Putte, Fraser, and Armbrister.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 1869**

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 1869** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1869** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chair; Bernsen, Staples, Sibley, and Van de Putte.

#### **CONFERENCE COMMITTEE ON SENATE BILL 214 DISCHARGED**

On motion of Senator Bernsen and by unanimous consent, the Senate conferees on **SB 214** were discharged.

Question—Shall the Senate concur in the House amendments to **SB 214**?

On motion of Senator Bernsen and by unanimous consent, the Senate concurred in the House amendments to **SB 214**.

#### **CONCLUSION OF MORNING CALL**

The Presiding Officer at 10:47 a.m. announced the conclusion of morning call.

**HOUSE BILL 1148 ON SECOND READING**

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

**HB 1148**, Relating to notice of proposed construction sent to the county commissioners court and others regarding, and the marking, location, and removal of, certain wireless communication facilities.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1148** as follows:

(1) Insert a new SECTION 1 to the bill (Senate Committee Printing, page 1, between lines 13 and 14) to read as follows and renumber the subsequent SECTIONS of the bill appropriately:

SECTION 1. This Act may be cited as the LeClair-Jennings Act.

(2) In SECTION 1 of the bill, in proposed Section 35.112, Business & Commerce Code (Senate Committee Printing, page 1, lines 22 and 23), between "facility" and "shall" insert "that is taller than 100 feet".

(3) In SECTION 1 of the bill, in proposed Section 35.112, Business & Commerce Code (Senate Committee Printing, page 1, lines 29 and 30), strike Subdivision (2) and substitute the following:

(2) the correct phone number and address of the person proposing the construction;

(4) In SECTION 1 of the bill, in proposed Section 35.114, Business & Commerce Code (Senate Committee Printing, page 2, line 7), between "occurs" and the comma, insert "that results in a change in the information required under Section 35.113(b)(2), (3), or (4)".

(5) In SECTION 1 of the bill, in proposed Section 35.116, Business & Commerce Code (Senate Committee Printing, page 2, line 18), between "service," and "a" insert "a wireless communication facility used by an entity only for internal communications,".

(6) In SECTION 2 of the bill, in proposed Section 21.069, Transportation Code (Senate Committee Printing, page 2, lines 38 and 39), strike "or a row crop, including cotton, corn, grain, grapes, beets, peanuts, or another row crop, is grown on a continuing basis" and substitute "or an agricultural crop, including cotton, corn, grain, grapes, beets, peanuts, and rice, but not including grass grown for hay, is grown on a continuing basis".

(7) In SECTION 2 of the bill, in proposed Section 21.069(c), Transportation Code (Senate Committee Printing, page 2, line 47), between "field" and the period, insert "or within 100 feet of a cultivated field".

(8) In SECTION 2 of the bill, in proposed Section 21.069(d), Transportation Code (Senate Committee Printing, page 2, lines 48 and 49), strike "A person who provides commercial wireless communications services and constructs a wireless communication facility" and substitute "A person who proposes to construct a wireless communications facility".

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

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **HB 1148** in SECTION 1 of the bill by striking proposed Section 35.116, Business & Commerce Code (Senate Committee Printing, page 2, lines 17-28) and substituting the following:

Sec. 35.116. EXCEPTIONS. This subchapter does not apply to:

- (1) any structure whose main purpose is to provide electric service;
- (2) a wireless communication facility used by an entity only for internal purposes;
- (3) a cable television company facility if the company holds a valid and current franchise;
- (4) an antenna owned and operated by a federally licensed amateur radio station operator;
- (5) a wireless communication facility constructed by a municipality;
- (6) a wireless communication facility used exclusively for emergency communications;
- (7) a colocation antenna;
- (8) a wireless communication facility installed for colocation purposes; or
- (9) unless the structure exceeds 200 feet in height, any of the following structures:
  - (A) a radio or television reception antenna;
  - (B) a satellite or microwave parabolic antenna not used by a wireless communication service provider;
  - (C) a receive-only antenna; or
  - (D) a radio or television broadcasting facility.

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

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **HB 1148** in SECTION 1 of the bill (Senate Committee Printing, page 2, between lines 31 and 32), by inserting the following:

Sec. 35.118. PROHIBITION. To the extent not already governed by and not inconsistent with the federal Telecommunications Act of 1996 (47 U.S.C. Section 151 et seq.), as amended, a wireless communications facility that is more than 15 feet in height above ground level may not be located within three miles of the castor railroad crossing, located on the eastern side of a peak that is an oblong promontory with rimrock edges on the north and west sides that is 1,712 feet above sea level and that is in a county with a population of less than 5,500, whose county seat has a population of less than 2,500.

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

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

**HB 1148** as amended was passed to third reading by a viva voce vote.

**HOUSE BILL 1148 ON THIRD READING**

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1148** 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)

**PHYSICIANS OF THE DAY**

Senator Van de Putte was recognized and presented Dr. James Martin and Dr. Julia Jensen of San Antonio as the Physicians of the Day.

The Senate welcomed Drs. Martin and Jensen and thanked them for their participation in the Physician of the Day program sponsored by the Texas Academy of Family Physicians.

**HOUSE BILL 2388 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:

**HB 2388**, Relating to the provision of telecommunications services to permanent residential or business premises that are not included in a certificated service area.

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

**HOUSE BILL 2388 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 **HB 2388** 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.

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

On motion of Senator Truan and by unanimous consent, Senate Rule 2.02 was suspended to grant floor privileges to Enrique Rios of The University of Texas at Dallas during today's session.

**HOUSE BILL 2648 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:

**HB 2648**, Relating to the administration of epinephrine by certain emergency medical services personnel.

The bill was read second time.

Senator Madla offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2648** by striking all below the enacting clause and substituting the following:

SECTION 1. Subchapter A, Chapter 773, Health and Safety Code, is amended by adding Section 773.014 to read as follows:

Sec. 773.014. ADMINISTRATION OF EPINEPHRINE. (a) An emergency medical services provider and a first responder organization may acquire and possess epinephrine auto-injector devices in accordance with this section. Emergency medical services personnel certified as emergency medical technicians or at a higher level of training may carry and administer epinephrine auto-injector devices in accordance with this section.

(b) The department shall adopt rules designed to protect the public health and safety to implement this section. The rules must provide that emergency medical services personnel certified as emergency medical technicians or at a higher level of training may administer an epinephrine auto-injector device to another only if the person has successfully completed a training course, approved by the department, in the use of the device that is consistent with the national standard training curriculum for emergency medical technicians.

(c) An emergency medical services provider or first responder organization may acquire, possess, maintain, and dispose of epinephrine auto-injector devices, and emergency medical services personnel certified as emergency medical technicians or at a higher level of training may carry, maintain, administer, and dispose of epinephrine auto-injector devices, only in accordance with:

(1) rules adopted by the department under this section; and

(2) a delegated practice agreement that provides for medical supervision by a licensed physician who either:

(A) acts as a medical director for an emergency medical services system or a licensed hospital; or

(B) has knowledge and experience in the delivery of emergency care.

(d) Emergency medical services personnel who administer epinephrine auto-injector devices to others shall immediately report the use to the physician supervising the activities of the emergency medical services personnel.

(e) The administration of an epinephrine auto-injector device to another under this section is considered to be the administration of emergency care for the purposes of any statute relating to liability for the provision of emergency care. The administration of an epinephrine auto-injector device to another in accordance with the requirements of this section does not constitute the unlawful practice of any health care profession.

(f) A person otherwise authorized to sell or provide an epinephrine auto-injector device to another may sell or provide the devices to an emergency medical services

provider or a first responder organization authorized to acquire and possess the devices under this section.

(g) This section does not prevent emergency medical services personnel who are also licensed health care professionals under another health care licensing law and who are authorized to acquire, possess, and administer an epinephrine auto-injector device under the other health care licensing law from acting under the other law.

(h) This section does not impose a standard of care not otherwise required by law.

SECTION 2. (a) This Act takes effect January 1, 2002, except that this Act takes effect September 1, 2001, for the limited purpose of allowing the Texas Department of Health to adopt rules under Section 773.014, Health and Safety Code, as added by this Act, that may take effect before January 1, 2002.

(b) Before January 1, 2002, epinephrine auto-injector devices may be carried and administered by certain emergency medical services personnel to the extent allowed under the law that exists before September 1, 2001.

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

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

**HB 2648** as amended was passed to third reading by a viva voce vote.

### **HOUSE BILL 2648 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 **HB 2648** 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 23, 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 303**, Congratulating Gary Terry of Tarrant County on his recovery from a heart attack at Austin-Bergstrom International Airport and commending him for his many good works in behalf of others.

**HCR 306**, Congratulating David P. McNutt of Huntsville on his retirement from the Texas Department of Criminal Justice.

**SCR 69**, Requesting to return Senate Bill No. 1057 to the senate for further consideration.

Respectfully,

/s/Sharon Carter, Chief Clerk  
House of Representatives

**(President in Chair)**

**HOUSE CONCURRENT RESOLUTION 303**

The President laid before the Senate the following resolution:

**HCR 303**, Congratulating Gary Terry of Tarrant County on his recovery from a heart attack at Austin-Bergstrom International Airport and commending him for his many good works in behalf of others.

NELSON

The resolution was read.

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

**GUEST PRESENTED**

Senator Nelson was recognized and introduced to the Senate Gary Terry of Tarrant County.

The Senate welcomed Mr. Terry.

**(Senator Moncrief in Chair)**

**HOUSE BILL 2432 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:

**HB 2432**, Relating to the ratification of the creation of and to the administration, powers, duties, operation, and financing of the Lost Pines Groundwater Conservation District.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**GUESTS PRESENTED**

Senator Wentworth was recognized and introduced to the Senate eighth-grade students from Sonora.

The Senate welcomed its guests.

(President in Chair)

**MOTION TO PLACE  
HOUSE BILL 1912 ON SECOND READING**

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

**HB 1912**, Relating to the authority of a municipality to impose and use utility fees for certain disabled access improvements.

There was objection.

Senator West then moved to suspend the regular order of business and take up **HB 1912** for consideration at this time.

The motion was lost by the following vote: Yeas 18, Nays 11, Present-not voting 1. (Not receiving two-thirds vote of Members present)

Yeas: Armbrister, Barrientos, Bernsen, Brown, Cain, Ellis, Gallegos, Lindsay, Lucio, Madla, Moncrief, Shapleigh, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Bivins, Carona, Fraser, Harris, Haywood, Jackson, Nelson, Ogden, Shapiro, Sibley, Staples.

Present-not voting: Mr. President.

Absent: Duncan.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

May 23, 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 269**, Honoring N. B. "Buck" Jordan, Jr., on his retirement from the Waxahachie Chamber of Commerce.

**HCR 290**, Honoring the memory of Richard Dale Cottle of Woodway.

Respectfully,

/s/Sharon Carter, Chief Clerk  
House of Representatives

**HOUSE CONCURRENT RESOLUTION 269**

The President laid before the Senate the following resolution:

**HCR 269**, Honoring N. B. "Buck" Jordan, Jr., on his retirement from the Waxahachie Chamber of Commerce.

CAIN

The resolution was read.

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

**GUEST PRESENTED**

Senator Cain, joined by Senator Nelson, was recognized and introduced to the Senate N. B. "Buck" Jordan, Jr., of Waxahachie.

The Senate welcomed Mr. Jordan.

**HOUSE BILL 2065 ON SECOND READING**

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

**HB 2065**, Relating to the allocation of certain settlement money awarded to the state to appropriation accounts at the direction of the attorney general with the prior approval of the Legislative Budget Board.

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

**HOUSE BILL 2065 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2065** 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 5 ON SECOND READING**

On motion of Senator Nelson 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 5**, Relating to the deterrence of conduct involving the operation of a motor vehicle while under the influence of an alcoholic beverage; providing a penalty.

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

**HOUSE BILL 5 ON THIRD READING**

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 5** 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 910 ON SECOND READING**

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

**HB 910**, Relating to the establishment of The Texas A&M University System Health Science Center South Texas Center for Rural Public Health.

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

**HOUSE BILL 910 ON THIRD READING**

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 910** 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 35 ON SECOND READING**

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

**HB 35**, Relating to the requirements for a meeting of certain governmental bodies held by videoconference call.

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

**HOUSE BILL 35 ON THIRD READING**

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 35** 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 2028 ON SECOND READING**

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

**HB 2028**, Relating to the enforcement of a lien by the Texas Workforce Commission for unpaid wages or penalties.

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

**HOUSE BILL 2028 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2028** 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.

**GUESTS PRESENTED**

Senator Lucio was recognized and introduced to the Senate Gloria Marquez, Director of Casa Tamaulipas for the State of Tamaulipas, Mexico, and Marilyn Kuri and Carla Martinez from the Universidad del Golfo in Tampico, Tamaulipas, Mexico.

The Senate welcomed its guests.

**(Senator Cain in Chair)**

**HOUSE BILL 2890 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:

**HB 2890**, Relating to the creation of an offense prohibiting certain persons in custody from contacting their victims.

The bill was read second time.

Senator Madla offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2890** (Senate Committee Printing) by adding an appropriately numbered SECTION to read as follows and by renumbering existing SECTIONS accordingly:

SECTION \_\_\_\_\_. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 97 to read as follows:

CHAPTER 97. LIABILITY OF CORRECTIONAL  
FACILITIES AND OFFICERS  
BARRED FOR CERTAIN ACTS OF INMATES

Sec. 97.001. LIABILITY BARRED. A correctional facility or an officer or employee of a correctional facility is not liable under any law for damages arising from an act committed by a person confined in the correctional facility that is in violation of Section 38.111, Penal Code.

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

Senator Barrientos offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **HB 2890** on page 1, between lines 46-47, by inserting the following, and renumbering all subsequent SECTIONS accordingly:

"SECTION 2. Article 57.02, Code of Criminal Procedure, is amended by adding Subsection (h) to read as follows:

(h) Unless the release or disclosure is required under Subsection (g) of this article, a public servant or other person who has access to or obtains the name, address, telephone number, or other identifying information of a victim younger than 17 years of age may not release or disclose the identifying information to any person who is not assisting in the investigation, prosecution, or defense of the case. This subsection does not apply to the release or disclosure of a victim's identifying information by:

(1) a victim; or

(2) the victim's parent, conservator, or guardian, unless the parent, conservator, or guardian is a defendant in the case.

SECTION 3. Article 57.03, Code of Criminal Procedure, is amended to read as follows:

Art. 57.03. OFFENSE. (a) A public servant with access to the name, address, or telephone number of a victim 17 years of age or older who has chosen [to be designated by] a pseudonym under this chapter commits an offense if the public servant [intentionally or] knowingly discloses the name, address, or telephone number of the victim to any person who is not assisting in the investigation or prosecution of the offense or to any person other than the defendant, the defendant's attorney, or the person specified in the order of a court of competent jurisdiction.

(b) A public servant or other person commits an offense if the person:

(1) has access to or obtains the name, address, or telephone number of a victim younger than 17 years of age; and

(2) knowingly discloses the name, address, or telephone number of the victim to any person who is not assisting in the investigation or prosecution of the offense or to any person other than the defendant, the defendant's attorney, or the person specified in the order of a court of competent jurisdiction.

(c) It is an affirmative defense to prosecution under Subsection (b) that the actor is:

(1) the victim; or

(2) the victim's parent, conservator, or guardian, unless the actor is a defendant in the case.

(d) An offense under this article is a Class C misdemeanor.

SECTION 4. (a) Except as provided by Subsection (b) of this section, the change in law made by this Act in adding Article 57.02(h), Code of Criminal

Procedure, applies only to an offense committed against a juvenile sex offense victim on or after the effective date of this Act. An offense committed against a juvenile sex offense victim before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

(b) The change in law made by this Act in amending Article 57.03, Code of Criminal Procedure, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

(c) For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date."

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

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

**HB 2890** as amended was passed to third reading by a viva voce vote.

### **HOUSE BILL 2890 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 **HB 2890** be placed on its third reading and final passage.

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

Present-not voting: Mr. President.

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

### **COMMITTEE SUBSTITUTE HOUSE BILL 2146 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 2146**, Relating to provision of certain health benefit claims information to employers.

The bill was read second time.

Senator Nelson offered the following amendment to the bill:

#### **Floor Amendment No. 1**

Amend **CSHB 2146** as follows:

(1) In SECTION 1 of the bill, in Subsection (a), Section 3, Article 21.49-19, Insurance Code (Committee printing page 1, line 45) strike "Sec. 3. CLAIM COST INFORMATION. (a) On the request of an" and substitute "Sec. 3. CLAIM COST INFORMATION; CONTRACT REQUIREMENTS. (a) An entity issuing a group health benefit plan shall comply with the requirements of Subsection (d) of this section and, on the request of an"

(2) In SECTION 1 of the bill, insert a new Subsection (d), Article 21.49-19, Insurance Code (Committee printing page 1, after line 63) to read as follows:

(d)(1) The commissioner shall adopt rules that establish standard contract forms for use by entities issuing group health benefit plans in entering into contracts with physicians and, except as provided by Subdivision (2) of this subsection, require the entities to use those contracts.

(2) An entity issuing a group health benefit plan or a physician may use a contract form other than a form required under Subdivision (1) of this subsection that:

(A) the physician asks to be used;

(B) the physician and entity issuing the group health benefit plan prepare with equal representation; and

(C) the physician and the entity issuing the group health benefit plan mutually agree may be used.

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

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

**CSHB 2146** as amended was passed to third reading by a viva voce vote.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 2146 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 2146** 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 553 ON SECOND READING**

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

**HB 553**, Relating to the admissibility in a criminal proceeding of a statement made as a result of certain custodial interrogations and obtained in compliance with the laws of another state or the United States.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

#### **Floor Amendment No. 1**

Amend **HB 553** in Section 8, Subsection (1), after "laws of that state" insert, "or this state"

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

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

**HB 553** as amended was passed to third reading by a viva voce vote.

### HOUSE BILL 553 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 553** 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.

### GUESTS PRESENTED

Senator Wentworth was recognized and introduced to the Senate seventh-grade students from Sonora.

The Senate welcomed its guests.

### HOUSE BILL 1537 ON THIRD READING

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

**HB 1537**, Relating to a study and a pilot program regarding the provision of medical assistance and certain health benefits plan coverage for children of migrant or seasonal agricultural workers.

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

### RECORD OF VOTES

Senators Bivins, Carona, Fraser, Haywood, Nelson, Sibley, Staples, and Wentworth asked to be recorded as voting "Nay" on the final passage of **HB 1537**.

### HOUSE BILL 2410 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 2410**, Relating to the authority of a justice or municipal court to waive payment of fines and costs imposed on certain indigent defendants.

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

### RECORD OF VOTES

Senators Haywood and Ogden asked to be recorded as voting "Nay" on the passage of **HB 2410** to third reading.

### HOUSE BILL 2410 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 2410** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2, Present-not voting 1.

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

Nays: Haywood, Ogden.

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)

### VOTE RECONSIDERED ON SENATE BILL 732

On motion of Senator Barrientos and by unanimous consent, the vote by which the Senate concurred in the House amendment to **SB 732** was reconsidered:

**SB 732**, Relating to the certification and expenditure of certain revenue not included in a county budget.

Question—Shall the Senate concur in the House amendment to **SB 732**?

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

The motion prevailed.

The Presiding Officer, Senator Cain in Chair, asked if there were any motions to instruct the conference committee on **SB 732** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Barrientos, Chair; Cain, Lindsay, Madla, and Shapiro.

### HOUSE BILL 2263 ON SECOND READING

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

**HB 2263**, Relating to a guide for historical markers along roadways in this state.

The bill was read second time.

Senator Gallegos offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 2263** by adding, at the end of proposed section 442.0065(e), Government Code, "Revenue from sales of the guide shall be deposited to the credit of the state highway fund and is exempt from the application of Section 403.095."

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

Senator Ogden offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **HB 2263** by adding the following Subsection (f) to read as follows:

"(f) the department shall work with the commission to ensure that there is no duplication between publications currently available through the commission or other sources."

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

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

**HB 2263** as amended was passed to third reading by a viva voce vote.

**HOUSE BILL 2263 ON THIRD READING**

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2263** 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)

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

May 23, 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 302**, Instructing the enrolling clerk of the house to make technical corrections to House Bill No. 689.

**HCR 305**, Honoring Brandon Slay of Amarillo for his achievements.

Respectfully,

/s/Sharon Carter, Chief Clerk  
House of Representatives

**HOUSE CONCURRENT RESOLUTION 305**

The Presiding Officer laid before the Senate the following resolution:

**HCR 305**, Honoring Brandon Slay of Amarillo for his achievements.

BIVINS

The resolution was read.

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

**GUEST PRESENTED**

Senator Bivins was recognized and introduced to the Senate Brandon Slay.

The Senate welcomed Mr. Slay.

**(President in Chair)**

**RECESS**

The President at 12:20 p.m. announced the Senate would stand recessed until 1:15 p.m. today.

**AFTER RECESS**

The Senate met at 1:15 p.m. and was called to order by the President.

**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:

**SCR 69, HB 772, HB 811, HB 840, HB 927, HB 940, HB 1245, HB 1388, HB 1628, HB 1669, HB 1678, HB 1755, HB 1758, HB 1762, HB 1766, HB 1793, HB 1863, HB 1872, HB 1915, HB 1940, HB 1955, HB 1985, HB 1996, HB 2033, HB 2045, HB 2076, HB 2122, HB 2124, HB 2125, HB 2138, HB 2152, HB 2153, HB 2154, HB 2155, HB 2178, HB 2184, HB 2186, HB 2226, HB 2230, HB 2238, HB 2589, HB 2818, HB 2830, HB 2832, HB 2844, HB 2856, HB 2859, HB 2878, HB 2913, HB 2921, HB 3000, HB 3023, HB 3043, HB 3095, HB 3111, HB 3140, HB 3147, HB 3159, HB 3191, HB 3192, HB 3483, HB 3623, HB 3659, HCR 284.**

**GUESTS PRESENTED**

Senator Truan was recognized and introduced to the Senate seventh-grade students and their teachers from Tulosso-Midway Middle School in Corpus Christi.

The Senate welcomed its guests.

**VOTE RECONSIDERED ON  
HOUSE BILL 704**

On motion of Senator Shapiro and by unanimous consent, the vote by which **HB 704** was finally passed was reconsidered:

**HB 704**, Relating to the Careers to Classrooms Program.

Question—Shall **HB 704** be finally passed?

Senator Shapiro offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **HB 704** by striking the second reading floor amendment.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

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

**HB 704** as again amended was again finally passed by a viva voce vote.

**HOUSE BILL 1921 ON SECOND READING**

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

**HB 1921**, Relating to the continuation of adoption assistance after the 18th birthday of certain children.

The bill was read second time.

Senator Gallegos offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1921** in SECTION 1 of the bill, in proposed Section 162.3041(a), Family Code (Senate committee printing page 1, line 17), by striking "Section 162.304(a)" and substituting "Section 162.304".

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

Senator Gallegos offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **HB 1921** (Senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. The Department of Protective and Regulatory Services is required to implement this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the department may, but is not required to, implement this Act using other appropriations available for the purpose.

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

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

**HB 1921** as amended was passed to third reading by a viva voce vote.

**HOUSE BILL 1921 ON THIRD READING**

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1921** 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 3590 ON SECOND READING**

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

**HB 3590**, Relating to establishing the Texas Fund for Geography Education to support geography education at public, private, or independent institutions of higher education.

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

### **HOUSE BILL 3590 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3590** be placed on its third reading and final passage.

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

Present-not voting: Mr. President.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

### **HOUSE BILL 2723 ON SECOND 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 second reading and passage to third reading:

**HB 2723**, Relating to civil actions involving persons who file complaints with governmental agencies.

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

### **HOUSE BILL 2723 ON THIRD READING**

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2723** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, 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.

Nays: Brown, Cain.

Present-not voting: Mr. President.

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

### **RECORD OF VOTES**

Senators Brown and Cain asked to be recorded as voting "Nay" on the final passage of **HB 2723**.

### **HOUSE BILL 2643 ON SECOND READING**

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

**HB 2643**, Relating to the ratification of the creation of and to the administration, powers, duties, operation, and financing of the Crossroads Groundwater Conservation District.

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

### **HOUSE BILL 2643 ON THIRD READING**

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2643** 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 2614 ON SECOND READING**

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

**HB 2614**, Relating to a dental services pilot program in border-region counties.

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

### **HOUSE BILL 2614 ON THIRD READING**

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2614** 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 3081 ON SECOND READING**

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

**HB 3081**, Relating to imposing liens on aircraft for nonpayment of fuel charges.

The bill was read second time.

Senator Fraser offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 3081** in SECTION 2 of the bill, in Section 70.303, Property Code, as amended by the bill, by striking "120th" and substituting "180th [~~120th~~]" (senate committee printing, page 1, line 25).

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

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

**HB 3081** as amended was passed to third reading by a viva voce vote.

**HOUSE BILL 3081 ON THIRD READING**

Senator Moncrief moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3081** 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 302**

The President laid before the Senate the following resolution:

**HCR 302**, Instructing the enrolling clerk of the house to make technical corrections to **HB 689**.

WENTWORTH

The resolution was read.

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

**HOUSE BILL 1706 ON SECOND READING**

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

**HB 1706**, Relating to the regulation of architecture, landscape architecture, and interior design by the Texas Board of Architectural Examiners.

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

**HOUSE BILL 1706 ON THIRD READING**

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1706** 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 1689 ON SECOND READING**

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

**HB 1689**, Relating to an exemption from ad valorem taxation for certain organizations engaged primarily in performing charitable functions.

The bill was read second time.

Senator Barrientos offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1689** as follows:

(1) On page 1, between lines 22-23, insert the following and reletter the subsequent subsections accordingly:

"(b) An exemption under this section may not be granted unless the exemption is adopted either:

(1) by the governing body of the taxing unit; or

(2) by a favorable vote of a majority of the qualified voters of the taxing unit at an election called by the governing body of a taxing unit, and the governing body shall call the election on the petition of at least 20 percent of the number of qualified voters who voted in the preceding election of the taxing unit."

(2) On page 1, line 23, strike "A" and substitute the following: "If approved under subsection (b), a"

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

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

**HB 1689** as amended was passed to third reading by a viva voce vote.

**RECORD OF VOTE**

Senator Staples asked to be recorded as voting "Nay" on the passage of **HB 1689** to third reading.

**HOUSE BILL 1689 ON THIRD READING**

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1689** 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, Ogden, Shapiro, Shapleigh, Sibley, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Staples.

Present-not voting: Mr. President.

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

### RECORD OF VOTE

Senator Staples asked to be recorded as voting "Nay" on the final passage of **HB 1689**.

### HOUSE BILL 1721 ON SECOND READING

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

**HB 1721**, Relating to certification examinations for educators certified in other jurisdictions.

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

### HOUSE BILL 1721 ON THIRD READING

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1721** be placed on its third reading and final passage.

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

Present-not voting: Mr. President.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

### HOUSE BILL 3473 ON SECOND 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 second reading and passage to third reading:

**HB 3473**, Relating to prohibiting employer retaliation against certain employees who report child abuse or neglect.

The bill was read second time.

Senator Shapleigh offered the following amendment to the bill:

### Floor Amendment No. 1

Amend **HB 3473** (Senate Committee Printing) as follows:

(1) In SECTION 1 of the bill, in proposed Section 261.110, Family Code (page 1, between lines 48 and 49), insert the following:

(f) A public employee who alleges a violation of this section may sue the employing state or local governmental entity for the relief provided for by this section. Sovereign immunity is waived and abolished to the extent of liability created by this section. A person having a claim under this section may sue a governmental unit for damages allowed by this section.

(g) In a suit under this section against an employing state or local governmental entity, a plaintiff may not recover compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses in an amount that exceeds:

(1) \$50,000, if the employing state or local governmental entity has fewer than 101 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year;

(2) \$100,000, if the employing state or local governmental entity has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year;

(3) \$200,000, if the employing state or local governmental entity has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year; and

(4) \$250,000, if the employing state or local governmental entity has more than 500 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year.

(h) If more than one subdivision of Subsection (g) applies to an employing state or local governmental entity, the amount of monetary damages that may be recovered from the entity in a suit brought under this section is governed by the applicable provision that provides the highest damage award.

(2) Reletter the subsequent subsections of proposed Section 261.110, Family Code, accordingly.

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

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

**HB 3473** as amended was passed to third reading by a viva voce vote.

### **HOUSE BILL 3473 ON THIRD READING**

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3473** 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 660 ON SECOND READING**

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

**HB 660**, Relating to career and technology education and training.

There was objection.

Senator Van de Putte then moved to suspend the regular order of business and take up **HB 660** for consideration at this time.

The motion prevailed by the following vote: Yeas 23, Nays 4, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bernsen, Brown, Cain, Ellis, Gallegos, Harris, Lindsay, Lucio, Madla, Moncrief, Nelson, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Carona, Fraser, Haywood, Ogden.

Present-not voting: Mr. President.

Absent: Bivins, Duncan, Jackson.

The bill was read second time.

Senator Van de Putte offered the following amendment to the bill:

### **Floor Amendment No. 1**

Amend **HB 660** as follows:

(1) Strike SECTION 3 of the bill (Committee Report, page 1, line 61, through page 2, line 28) and renumber the subsequent SECTIONS of the bill accordingly.

(2) In SECTION 12 of the bill (Committee Report, page 5, lines 8 and 13), strike "5" and substitute "4" at each place it is used.

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 660** (House committee report) by adding the following SECTIONS to the bill and renumber existing SECTIONS of the bill appropriately:

SECTION 12. Chapter 32, Education Code, is amended by adding Subchapter C to read as follows:

#### SUBCHAPTER C. TRANSFER OF DATA PROCESSING EQUIPMENT TO STUDENTS

Sec. 32.101. DEFINITION. In this subchapter, "data processing" has the meaning assigned by Section 2054.003, Government Code.

Sec. 32.102. AUTHORITY. (a) As provided by this subchapter, a school district or open-enrollment charter school may transfer to a student enrolled in the district or school:

(1) any data processing equipment donated to the district or school, including equipment donated by:

(A) a private donor; or

(B) a state eleemosynary institution or a state agency under Section 2175.126, Government Code;

(2) any equipment purchased by the district or school, to the extent consistent with Section 32.105; and

(3) any surplus or salvage equipment owned by the district or school.

(b) A school district or open-enrollment charter school may accept:

(1) donations of data processing equipment for transfer under this subchapter; and

(2) any gifts, grants, or donations of money or services to purchase, refurbish, or repair data processing equipment under this subchapter.

Sec. 32.103. ELIGIBILITY; PREFERENCE. (a) A student is eligible to receive data processing equipment under this subchapter only if the student does not otherwise have home access to data processing equipment, as determined by the student's school district or open-enrollment charter school.

(b) In transferring data processing equipment to students, a school district or open-enrollment charter school shall give preference to educationally disadvantaged students.

Sec. 32.104. REQUIREMENTS FOR TRANSFER. Before transferring data processing equipment to a student, a school district or open-enrollment charter school must:

(1) adopt rules governing transfers under this subchapter, including provisions for technical assistance to the student by the district or school;

(2) determine that the transfer serves a public purpose and benefits the district or school; and

(3) remove from the equipment any offensive, confidential, or proprietary information, as determined by the district or school.

Sec. 32.105. EXPENDITURE OF PUBLIC FUNDS. A school district or open-enrollment charter school may spend public funds to:

(1) purchase, refurbish, or repair any data processing equipment transferred to a student under this subchapter; and

(2) store, transport, or transfer data processing equipment under this subchapter.

Sec. 32.106. RETURN OF EQUIPMENT. (a) Except as provided by Subsection (b), a student who receives data processing equipment from a school district or open-enrollment charter school under this subchapter shall return the equipment to the district or school not later than the earliest of:

(1) five years after the date the student receives the equipment;

(2) the date the student graduates;

(3) the date the student transfers to another school district or open-enrollment charter school; or

(4) the date the student withdraws from school.

(b) Subsection (a) does not apply if, at the time the student is required to return the data processing equipment under that subsection, the district or school determines that the equipment has no marketable value.

SECTION 13. Section 2175.126, Government Code, is amended to read as follows:

Sec. 2175.126. DISPOSITION OF DATA PROCESSING EQUIPMENT. (a) If a disposition of a state agency's surplus or salvage data processing equipment is not made under this subchapter, the state agency shall transfer the equipment to a school district or open-enrollment charter school in this state under Subchapter C, Chapter 32, Education Code, or to the Texas Department of Criminal Justice. The state agency may not collect a fee or other reimbursement from the district, the school, or the Texas Department of Criminal Justice for the surplus or salvage data processing equipment.

(b) If a disposition of the surplus or salvage data processing equipment of a state eleemosynary institution or an institution or agency of higher education is not

made under other law, the institution or agency shall transfer the equipment to a school district or open-enrollment charter school in this state under Subchapter C, Chapter 32, Education Code, or to the Texas Department of Criminal Justice. The institution or agency may not collect a fee or other reimbursement from the district, the school, or the Texas Department of Criminal Justice for the surplus or salvage data processing equipment.

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

Senator Cain offered the following amendment to the bill:

### **Floor Amendment No. 3**

Amend **HB 660** by adding the following appropriately numbered SECTIONS to the bill and renumbering the SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subtitle B, Title 4, Labor Code, is amended by adding Chapter 315 to read as follows:

#### CHAPTER 315. 21ST CENTURY TECHNOLOGY COLLEGE AND CAREERS GRANT PROGRAM

Sec. 315.001. SHORT TITLE. This chapter may be cited as the 21st Century Technology College and Careers Act.

Sec. 315.002. PURPOSE; CONSTRUCTION. (a) The purpose of this chapter is to strengthen and sustain existing partnerships in each region of the state by providing planning, coordination, and grant funding to partnerships to assist students in obtaining a high level of academic achievement and competency in employment skills, to serve the workforce needs of employers, and to meet the economic development goals of communities in the 21st century.

(b) This chapter may not be construed to provide a partnership with any regulatory authority or control over a decision of a state or local agency or an institution of higher education regarding the implementation of a partnership initiative.

Sec. 315.003. DEFINITIONS. In this chapter:

(1) "Educational institution" includes an institution of higher education and a secondary school operated by a public school district of this state.

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

(3) "Participant" means a school district, institution of higher education, employer or employer organization, chamber of commerce, industry group or trade association, local workforce development board, tech-prep consortium, labor organization, or other entity that participates in a partnership.

(4) "Partnership" means a regional collaboration of participants who work together to promote voluntary workforce development opportunities for secondary and postsecondary students.

(5) "Region" means a geographic state planning region established by the governor under Chapter 391, Local Government Code.

(6) "Tech-prep consortium" has the meaning assigned by Section 61.851, Education Code, as added by Chapter 1422, Acts of the 76th Legislature, Regular Session, 1999.

Sec. 315.004. GRANT PROGRAM. (a) The commission shall establish a grant program to assist partnerships in promoting voluntary educational improvement and

workforce development opportunities for secondary and postsecondary students, as well as improved transitions from secondary education to postsecondary education to employment.

(b) The commission shall award grants as provided by Subsection (c) to one or more partnerships in each region.

(c) Each state fiscal year, the commission shall award a base allocation of \$100,000 to one or more partnerships in each region. The commission shall distribute any additional grant money to partnerships under this chapter in accordance with an equitable allocation formula that is determined by the commission and based on the amount of matching funds from participants identified by the commission in each region's application.

(d) A partnership receiving grant money under this chapter shall:

(1) develop initiatives to improve the transition from educational institutions to the workforce, including:

(A) voluntary student internships and work-based learning;

(B) the use of labor market information to predict future workforce opportunities;

(C) broad-based career awareness development;

(D) professional development and support of teachers and counselors at educational institutions, including industry tours and teacher externships;

(E) student mentoring programs; and

(F) promotion of the availability of postsecondary scholarships and grant funding;

(2) emphasize postsecondary education;

(3) provide students with opportunities to apply their academic work to authentic problems outside of the school environment;

(4) emphasize mathematics, science, engineering, and technology while stressing the importance of all foundation and enrichment curricula;

(5) emphasize high-wage and high-skill jobs;

(6) encourage students to take rigorous academic courses and to complete the recommended high school program; and

(7) emphasize activities that are supportive of and compliant with the essential knowledge and skills curriculum.

(e) A partnership that receives grant money under this chapter may not spend grant money for tuition scholarships to elementary and secondary private and religious schools.

Sec. 315.005. STUDENT SAFEGUARDS. (a) Student participation in an activity sponsored by a partnership is voluntary.

(b) If an activity sponsored by a partnership requires significant secondary student involvement, the partnership shall require parental consent in a form and manner prescribed by the local school board as a condition to a student's participation in the activity.

(c) An internship or other job opportunity sponsored by a partnership may not displace existing workers or require a student to work excessive or late hours.

Sec. 315.006. GRANT APPLICATION. A partnership that seeks to obtain a grant under this chapter must submit an application to the commission at the time and in a manner prescribed by commission rule.

Sec. 315.007. INTERAGENCY ADVISORY COMMITTEE. The commission shall appoint an interagency advisory committee to assist the commission in implementing this chapter. The interagency advisory committee shall be composed of one representative from each of the following state agencies:

- (1) the Texas Education Agency;
- (2) the Texas Higher Education Coordinating Board;
- (3) the Texas Department of Economic Development;
- (4) the Council on Workforce and Economic Competitiveness;
- (5) the Texas Rehabilitation Commission;
- (6) the Texas Commission for the Blind; and
- (7) any other state agency the commission considers appropriate.

Sec. 315.008. REPORT. A partnership that receives a grant under this chapter shall prepare and deliver to the commission an annual report on the effectiveness of the partnership's activities.

Sec. 315.009. RULES. The commission shall adopt rules as necessary to implement this chapter.

SECTION \_\_\_\_\_. (a) The Texas Workforce Commission may not use money from the general revenue fund, including money from dedicated accounts in the general revenue fund or money required to be deposited to the credit of the general revenue fund, to implement Chapter 315, Labor Code, as added by this Act, unless otherwise authorized by law.

(b) If the legislature does not appropriate funds to implement Chapter 315, Labor Code, as added by this Act, the commission shall attempt to implement the chapter by using other sources of funding, including, notwithstanding Subsection (a) of this section, federal funds, agency discretionary funds, interagency contract funds, and gifts, grants, and donations.

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

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

**HB 660** as amended was passed to third reading by a viva voce vote.

### **HOUSE BILL 660 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 660** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 4, Present-not voting 1.

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

Nays: Bivins, Carona, Fraser, Haywood.

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.

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

Nays: Bivins, Carona, Fraser, Haywood, Ogden.

Present-not voting: Mr. President.

**GUEST PRESENTED**

Senator Moncrief was recognized and introduced to the Senate Representative Charlie Geren who was elected Freshman Representative of the Year by the House of Representatives.

The Senate welcomed Representative Geren and extended its congratulations.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 266 ON SECOND 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 second reading and passage to third reading:

**CSHB 266**, Relating to the conveyance of certain state property.

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 266** (Senate Committee Printing) by deleting SECTION 2 of the bill and renumbering the subsequent SECTIONS of the bill accordingly.

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

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

**CSHB 266** as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 266 ON THIRD READING**

Senator Ogden moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 266** be placed on its third reading and final passage.

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

Present-not voting: Mr. President.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

**HOUSE BILL 2972 ON SECOND READING**

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

**HB 2972**, Relating to local control of police officer employment matters by certain municipalities.

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

**RECORD OF VOTE**

Senator Staples asked to be recorded as voting "Nay" on the passage of **HB 2972** to third reading.

**HOUSE BILL 2972 ON THIRD READING**

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2972** 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, Ogden, Shapiro, Shapleigh, Sibley, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Staples.

Present-not voting: Mr. President.

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

**RECORD OF VOTE**

Senator Staples asked to be recorded as voting "Nay" on the final passage of **HB 2972**.

**(Senator Armbrister in Chair)**

**(President in Chair)**

**HOUSE BILL 2119 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:

**HB 2119**, Relating to the authorization and regulation of progressive bingo games.

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

**HOUSE BILL 2119 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 **HB 2119** be placed on its third reading and final passage.

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

Present-not voting: Mr. President.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

## HOUSE BILL 2008 ON SECOND READING

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

**HB 2008**, Relating to indoor air quality in buildings owned or leased by state or local government.

There was objection.

Senator Moncrief then moved to suspend the regular order of business and take up **HB 2008** for consideration at this time.

The motion prevailed by the following vote: Yeas 22, Nays 7, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bernsen, Cain, Carona, Ellis, Fraser, Gallegos, Haywood, Lucio, Madla, Moncrief, Nelson, Ogden, Shapiro, Shapleigh, Staples, Truan, Van de Putte, West, Whitmire, Zaffirini.

Nays: Bivins, Brown, Duncan, Harris, Lindsay, Sibley, Wentworth.

Present-not voting: Mr. President.

Absent: Jackson.

The bill was read second time.

Senator Shapleigh offered the following amendment to the bill:

### Floor Amendment No. 1

Amend **HB 2008** as follows:

(1) In SECTION 1 of the bill, between the heading for Chapter 385, Health and Safety Code, and the heading for Section 385.001, Health and Safety Code (page 1, between lines 15 and 16, senate committee printing), insert the following:

#### SUBCHAPTER A. GENERAL PROVISIONS

(2) In SECTION 1 of the bill, in Section 385.001, Health and Safety Code, strike the stricken definition of a public school (page 1, lines 36-39, senate committee printing) and substitute the following:

(5) [(4)] "Public school" means a building owned by a public school district or leased by a public school district for three months or more that is used by the district for a purpose that involves regular occupancy of the building by students.

(3) Insert the following at the end of the SECTION 1 of the bill (page 2, between lines 2 and 3, senate committee printing):

#### SUBCHAPTER B. SCHOOL BUILDING ASSESSMENT PROGRAM

Sec. 385.051. DUTIES OF SCHOOL DISTRICTS; PERIODIC ASSESSMENTS OF INDOOR AIR QUALITY. (a) A school district shall assess the indoor air quality of a public school in the district:

(1) within 90 days after the completion of a newly constructed school;

(2) within 90 days after an event that could reasonably be expected to significantly affect the indoor air quality in the school, such as a fire at the school, renovation of the school, or flooding of the school;

(3) when an assessment of the school is ordered by the superintendent of the district under Subsection (b); and

(4) within 90 days after the completion of remedial action taken to remedy a problem found during an earlier assessment of indoor air quality at the school.

(b) If there are confirmed reports of illness among students or staff at a public school that may reasonably be attributable to the indoor air quality of the school, the school principal or health care personnel employed by the school district shall report that fact to the board of trustees and the superintendent of the district. The superintendent shall consider the situation, consult with health care professionals and other persons as necessary, and order an assessment of the indoor air quality of the school if the superintendent considers an assessment to be warranted.

(c) This section does not prohibit conducting additional assessments whenever required by prudence or other law.

(d) The school district shall use individuals certified by the Texas Department of Health under Subchapter C to conduct the assessments.

(e) The assessments shall be conducted using the criteria established by the department under Section 385.052.

Sec. 385.052. DUTIES OF DEPARTMENT OF HEALTH; CRITERIA FOR BUILDING ASSESSMENTS. (a) The Texas Department of Health shall establish by rule criteria and checklists for assessing the indoor air quality of public schools.

(b) The rules must include requirements for assessing the indoor air quality of each school with respect to ambient temperature, relative humidity, the adequacy of ventilation, and the presence of:

- (1) carbon monoxide;
- (2) volatile organic compounds;
- (3) formaldehyde;
- (4) particulate matter;
- (5) carbon dioxide; and
- (6) molds.

(c) In establishing acceptable assessment methods or in adding to the factors listed under Subsection (b), the department shall consider the potential health effects and potential costs the board is required to consider in adopting the voluntary guidelines under Section 385.002.

Sec. 385.053. AVAILABILITY OF ASSESSMENT RESULTS. (a) Not later than the 60th day after the date an assessment of indoor air quality in a public school is completed, the school district shall send the complete results of the assessment, in a format prescribed by the Texas Department of Health, to the department and to the campus-level planning and decision-making committee established under Section 11.253, Education Code, for the affected public school.

(b) A school district on request shall promptly make available to any member of the public the complete results of an assessment of indoor air quality in a public school.

#### SUBCHAPTER C. DEPARTMENT OF HEALTH CERTIFICATION PROGRAM

Sec. 385.101. CERTIFICATION PROGRAM. (a) The Texas Department of Health shall certify individuals to perform public school indoor air quality assessments under Subchapter B.

(b) The department shall adopt rules to govern the certification program that are designed to ensure persons certified under this subchapter are capable of performing the air quality assessments and will properly report the results of an assessment. The rules must specify the training and testing a person must undergo to become certified under this subchapter. The rules also must specify the term of a license and grounds for suspension, revocation, or denial of a license.

(c) The department may certify a person under this subchapter without requiring the usual testing and training if:

(1) the person is licensed or certified in another field, such as a certified industrial hygienist, certified indoor environmentalist, certified safety professional, or professional engineer;

(2) the person is experienced in assessing indoor air quality; and

(3) the department considers the applicable requirements for licensing or certification in the other field to meet or exceed the requirements established by the department under this subchapter.

Sec. 385.102. CERTIFICATION FEE. (a) The Texas Department of Health shall charge a certification fee of \$50 to persons who become certified under this subchapter. The fee is payable on issuance of the certificate and on the renewal of a certificate.

(b) A school district shall pay the certification fees of school district personnel who become certified under this subchapter.

(4) Add the following appropriately numbered SECTIONS to the bill and renumber existing SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. Subchapter A, Chapter 46, Education Code, is amended by adding Section 46.0082 to read as follows:

Sec. 46.0082. ASSESSMENT OF INDOOR AIR QUALITY REQUIRED FOR CONSTRUCTION OR RENOVATION PROJECTS. A school district may not use state funds received under this chapter to make payments on bonds issued in connection with the construction or renovation of an instructional facility unless the district assesses the indoor air quality of the facility within 90 days after the construction or renovation is completed in accordance with Chapter 385, Health and Safety Code.

SECTION \_\_\_\_\_. Section 46.0082, Education Code, as added by this Act, does not apply to a construction or renovation project for which working drawings were completed before the effective date of this Act. A construction or renovation project for which working drawings were completed before the effective date of this Act is governed by the law in effect at the time the drawings were completed, and that law is continued in effect for that purpose.

The amendment was read and failed of adoption by the following vote: Yeas 13, Nays 15, Present-not voting 1.

Yeas: Barrientos, Bernsen, Ellis, Haywood, Lucio, Madla, Moncrief, Shapleigh, Truan, Van de Putte, West, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Cain, Carona, Duncan, Fraser, Gallegos, Harris, Lindsay, Nelson, Ogden, Sibley, Staples, Wentworth.

Present-not voting: Mr. President.

Absent: Jackson, Shapiro.

**HB 2008** was read second time and was passed to third reading by a viva voce vote.

### **HOUSE BILL 2008 ON THIRD READING**

Senator Moncrief moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2008** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 4, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Cain, Carona, Ellis, Fraser, Gallegos, Haywood, Lindsay, Lucio, Madla, Moncrief, Nelson, Ogden, Shapleigh, Sibley, Staples, Truan, Van de Putte, West, Whitmire, Zaffirini.

Nays: Brown, Duncan, Harris, Wentworth.

Present-not voting: Mr. President.

Absent: Jackson, Shapiro.

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

### GUESTS PRESENTED

Senator Whitmire was recognized and introduced to the Senate Young Keun Ahn and Deog Ryong Kim of the National Assembly of the Republic of Korea.

The Senate welcomed its guests.

### MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 23, 2001

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

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

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**SCR 2**, Declaring the pecan the official health nut of the State of Texas.

**SCR 21**, Memorializing congress to develop a treaty or agreement with Mexico to address health issues of mutual concern.

**SCR 24**, In observation of Veterans Day.

**SCR 37**, Urging the United States Congress to provide tax credits to individuals buying private health insurance.

**SCR 51**, Urging federal and state reconsideration of the necessity of designating the Arkansas River shiner as a threatened species and the necessity of designating critical habitat in Texas for the Arkansas River shiner.

**SCR 54**, Memorializing Congress to remove trade, financial, and travel restrictions relating to Cuba.

Respectfully,

/s/Sharon Carter, Chief Clerk  
House of Representatives

**VOTE RECONSIDERED ON  
HOUSE BILL 3323**

On motion of Senator Nelson and by unanimous consent, the vote by which **HB 3323** was finally passed was reconsidered:

**HB 3323**, Relating to the creation, organization, and powers of a coordinated county transportation authority; authorizing the imposition of a tax, the issuance of bonds and notes, and the exercise of the power of eminent domain.

Question—Shall **HB 3323** be finally passed?

Senator Madla offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 3323** by striking second reading Floor Amendment No. 2 by Madla.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

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

**HB 3323** as again amended was again finally passed by a viva voce vote.

**(Senator Armbrister in Chair)**

**(Senator Sibley in Chair)**

**(President in Chair)**

**HOUSE BILL 45 ON SECOND READING**

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

**HB 45**, Relating to a mile-based rating plan for motor vehicle insurance.

There was objection.

Senator Shapleigh then moved to suspend the regular order of business and take up **HB 45** for consideration at this time.

The motion prevailed by the following vote: Yeas 21, Nays 8, Present-not voting 1.

Yeas: Barrientos, Bernsen, Carona, Duncan, Ellis, Fraser, Gallegos, Lucio, Madla, Nelson, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Armbrister, Brown, Cain, Harris, Haywood, Jackson, Lindsay, Moncrief.

Present-not voting: Mr. President.

Absent: Bivins.

The bill was read second time.

Senator Fraser offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 45** by deleting section 2(c).

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

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

**HB 45** as amended was passed to third reading by the following vote: Yeas 20, Nays 8, Present-not voting 1.

Yeas: Barrientos, Bernsen, Carona, Duncan, Ellis, Gallegos, Lucio, Madla, Nelson, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Armbrister, Brown, Cain, Fraser, Harris, Haywood, Jackson, Moncrief.

Present-not voting: Mr. President.

Absent: Bivins, Lindsay.

**HOUSE BILL 45 ON THIRD READING**

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 45** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 23, Nays 4, Present-not voting 1.

Yeas: Barrientos, Bernsen, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Lucio, Madla, Moncrief, Nelson, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Armbrister, Brown, Haywood, Lindsay.

Present-not voting: Mr. President.

Absent: Bivins, Harris, Jackson.

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

**RECORD OF VOTES**

Senators Armbrister, Brown, and Haywood asked to be recorded as voting "Nay" on the final passage of **HB 45**.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3586 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:

**CSHB 3586**, Relating to an additional fee for filing civil cases in certain Dallas County courts.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3586 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 **CSHB 3586** be placed on its third reading and final passage.

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

Present-not voting: Mr. President.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

**HOUSE BILL 3355 ON SECOND READING**

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

**HB 3355**, Relating to water quality management plans for agricultural and silvicultural facilities.

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

**HOUSE BILL 3355 ON THIRD READING**

Senator Staples moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3355** 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.

**BILLS SIGNED**

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

**HB 149, HB 164, HB 170, HB 182, HB 596, HB 628, HB 892, HB 931, HB 949, HB 964, HB 1056, HB 1080, HB 1109, HB 1124, HB 1128, HB 1181, HB 1309, HB 1348, HB 1363, HB 1393, HB 1394, HB 1428, HB 1430, HB 1447, HB 1468, HB 2167, HB 2168, HB 2803, HB 2808, HB 2831, HB 2833, HB 2863, HB 2957, HB 2976, HB 3121, HB 3123, HB 3144, HB 3174, HB 3178, HB 3184, HB 3185, HB 3203, HB 3229, HB 3254, HB 3285, HB 3296, HB 3298, HB 3393, HB 3463, HB 3491, HB 3552, HB 3632, HB 3653.**

**MESSAGE FROM THE HOUSE****HOUSE CHAMBER**

Austin, Texas

May 23, 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 53**, Relating to access to criminal history record information by the Department of Protective and Regulatory Services.

**SB 200**, Relating to state and regional coordination of planning and development for implementation of state programs.

**SB 252**, Relating to notice of the appointment of a receiver in a suit for dissolution of a marriage.

**SB 263**, Relating to a written policy regulating certain travel by students enrolled at public institutions of higher education.

**SB 283**, Relating to special disease management programs for certain recipients of medical assistance under the Medicaid managed care program.

**SB 332**, Relating to the provision of a drug by a physician to certain indigent patients.

**SB 395**, Relating to the requirement that the Texas Judicial Council conduct a statewide jury service study and report the results of the study to the legislature.

**SB 456**, Relating to the designation of Farm-to-Market Road 528 as the Ralph L. Lowe Parkway.

**SB 486**, Relating to state liability for certain conduct of juvenile board members.

**SB 496**, Relating to a study of barriers to providing binational health benefit plan coverage.

**SB 505**, Relating to requiring students enrolled at certain medical and dental units to have health insurance coverage.

**SB 586**, Relating to the creation of the Center for Transportation Safety as part of the Texas Transportation Institute.

**SB 720**, Relating to regulating certain political contributions made by judicial candidates and officeholders.

**SB 840**, Relating to the response required of a governmental body to a request for information from a person who is incarcerated.

**SB 847**, Relating to the creation of municipal courts of record in Westlake located in Tarrant and Denton counties.

**SB 998**, Relating to the alternative certification requirements for certain public school teachers.

**SB 1006**, Relating to testing for accidental exposure to hepatitis B or hepatitis C.

**SB 1016**, Relating to the review of financial audits of regional planning commissions.

**SB 1036**, Relating to the election dates for directors of the Bee Groundwater Conservation District.

**SB 1064**, Relating to adoption services of the Department of Protective and Regulatory Services with respect to sibling groups.

**SB 1085**, Relating to the continuation of the advisory committee on inpatient mental health services.

**SB 1160**, Relating to the location of new veterans homes.

**SB 1214**, Relating to the financing and disposition of certain airport and air navigation facilities.

**SB 1226**, Relating to the creation of the Energy Corridor Management District; providing authority to impose a tax and issue bonds.

**SB 1288**, Relating to a limitation on the liability of directors of housing finance corporations.

**SB 1293**, Relating to coordination of services provided by Head Start and Early Head Start program providers.

**SB 1308**, Relating to a county's authority to set a fee for certain permits.  
(Committee Substitute)

**SB 1353**, Relating to the issuance of certain veterans license plates.

**SB 1367**, Relating to the transportation of an unsecured child in a motor vehicle; providing penalties.

**SB 1396**, Relating to the requirement that state agencies notify the governor's office of job vacancies.

**SB 1417**, Relating to the compensation and expenses of guardians and temporary guardians of the estate.

**SB 1470**, Relating to the creation of a pilot program for certain juveniles with mental illness and placed on probation by a juvenile court.

**SB 1573**, Relating to the regulation of floating cabins; providing penalties.  
(Committee Substitute/Amended)

**SB 1581**, Relating to certain practices in connection with a home loan.

**SB 1632**, Relating to municipalities that are exempt from giving security for court costs.

**SB 1637**, Relating to discount cards deceptively marketed as insurance.  
(Amended)

**SB 1654**, Relating to the provision of defense counsel to insureds by liability insurers; providing a civil penalty.  
(Amended)

**SB 1659**, Relating to the format of telecommunications utility billing statements.

**SB 1683**, Relating to the management of money earned by certain children while receiving services from the Department of Protective and Regulatory Services.

**SB 1684**, Relating to removal of malt liquor, ale, and beer from the premises of a holder of a mixed beverage permit and a brewpub license.  
(Committee Substitute)

**SB 1686**, Relating to the creation of the West Galveston Island Conservation District; providing the authority to impose taxes and issue bonds.  
(Amended)

**SB 1713**, Relating to the carrying of weapons by peace officers and by special investigators.

**SB 1732**, Relating to the creation of family home child care pilot programs for certain children under four years of age.

**SB 1736**, Relating to the waiver of penalties and interest if an error of a taxing unit or appraisal district results in failure to pay an ad valorem tax.

**SB 1758**, Relating to the boundaries of the Beeville Water Supply District.

**SB 1759**, Relating to the issuance and sale of and security and payment for public securities.

**SB 1763**, Relating to the provision of information about patient assistance programs offered by pharmaceutical companies.  
(Committee Substitute)

**SB 1767**, Relating to the issuance of a protective custody order by a magistrate.  
(Committee Substitute)

**SB 1781**, Relating to the appointment of a public defender by the Commissioners Court of Potter County.

**SB 1782**, Relating to the creation of the Frisco Square Management District; providing the authority to impose a tax and issue bonds.

**SB 1784**, Relating to the creation, administration, powers, duties, operation, and financing of the East Montgomery County Municipal Utility District No. 3.

**SB 1793**, Relating to meetings of the commissioner of insurance with the board of directors of certain guaranty associations.

**SB 1796**, Relating to the assumption of road utility district authority by the Baybrook Municipal Utility District No. 1, including the authority to impose taxes and issue bonds.

**SB 1800**, Relating to the transfer of records of the office of the lieutenant governor.

**SB 1807**, Relating to the duties of a magistrate regarding the provision of bail for a person arrested for a criminal offense.

**SB 1808**, Relating to the creation of a county court at law in Navarro County.

**SB 1823**, Relating to the approval of the creation and acts of Hays County Development District No. 1, to the administration, powers, duties, operation, and financing of the district, and to acquisition of the district's project.

**SB 1831**, Relating to the designation of a portion of certain roads as the Texas Independence Highway, the Juan N. Seguin Boulevard, and the Juan N. Seguin Memorial Interchange.

**SB 1840**, Relating to a study regarding the operation of The University of Texas at San Antonio and The University of Texas Health Science Center at San Antonio as a single research university.

Respectfully,

/s/Sharon Carter, Chief Clerk  
House of Representatives

(Senator Armbrister in Chair)

### HOUSE BILL 2914 ON SECOND READING

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

**HB 2914**, Relating to state fiscal matters.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 2914** as follows:

1) In SECTION 2 of the bill, on page 1, line 34, between "Resources" and "under", insert "or the Texas State Library and Archives Commission".

2) In SECTION 10 of the bill, on page 4, strike lines 11-15 and substitute the following:

"(b) Intellectual property is excepted from required disclosure under Chapter 552:

(1) beginning on the date the comptroller decides to seek a patent, trademark, service mark, collective mark, certification mark, or other evidence of protection of exclusivity concerning the property; and

(2) ending on the date the comptroller receives a decision about the comptroller's application for a patent, trademark, service mark, collective mark, certification mark, or other evidence of protection of exclusivity concerning the property."

3) In SECTION 18 of the bill, on page 9, strike lines 25-29, and substitute the following:

~~[Sec. 447.004. MODEL CODES. The energy management center may recommend model energy conservation building codes to municipalities for use in enacting or amending municipal ordinances.]~~

4) In SECTION 24 of the bill, on page 13, line 32, strike "and" and substitute "or".

5) In SECTION 40 of the bill, on page 24, line 45, between "is" and "amended", insert "reenacted and".

6) In SECTION 42 of the bill, on page 25, line 3, between "is" and "amended", insert "reenacted and".

7) Insert the following appropriately numbered SECTION:

"SECTION \_\_\_\_\_. Section 2175.242(c), Government Code, is amended to read as follows:

(c) This subchapter does not affect Section 403.273, which provides for the deletion from state property accounting records of a state agency's missing property ~~[on the state auditor's authorization].~~"

8) In SECTION 49 of the bill, on page 28, strike lines 25-27 and substitute the following:

"(d) For purposes of this section, the renewal, amendment, or extension of a contract executed on or before September 1, 1993, is considered to be the execution of a new contract."

9) Strike SECTION 51 of the bill, (page 28, lines 46-57) and substitute the following:

"SECTION 51. Section 2251.025(b), Government Code, is amended as follows:

(b) Interest accrues on an [An] overdue payment ~~[bears interest]~~ at the rate of one percent each month."

10) In SECTION 53 of the bill, on page 29, line 20, strike "is not suspended" and substitute "does not stop accruing".

11) In SECTION 54 of the bill, on page 29, strike lines 33-39, and substitute the following:

"Sec. 2251.026. Payment of Interest by State Agency. (a) A state agency is liable for any interest that accrues on an overdue payment under this chapter and shall pay the interest from funds appropriated or otherwise available to the agency at the same time the principal is paid. [(a) If the warrant for a payment the originating state agency owes is not mailed or electronically transmitted before the payment is overdue, the agency is liable for an interest payment that accrues under this chapter.]"

12) In SECTION 54 of the bill, on page 29, strike lines 48-62, and substitute the following:

"state agency under this chapter if the comptroller is responsible for issuing a warrant or initiating an electronic funds transfer to pay the principal amount on behalf of the agency.

(d) A state agency shall determine the amount of interest that accrues on an overdue payment by the agency under this chapter if the comptroller is not responsible for issuing a warrant or initiating an electronic funds transfer to pay the principal amount on behalf of the agency. [(e) The".

13) In SECTION 54 of the bill, on page 29, after line 66, insert the following:

"(e) The comptroller or state agency shall submit the interest payment with the net amount due for the goods or services."

14) In SECTION 54 of the bill, renumber subsections (e)-(h) in Section 2251.026, Government Code to conform.

15) In SECTION 63 of the bill, on page 31, line 35, between "section" and the period, insert "provided that the required payment date be no earlier than the 30th day after the last day of the reporting period in which the fees are collected".

16) In SECTION 65 of the bill, on page 32, line 14, between "comptroller" and the period, insert "provided that the required payment date be no earlier than the 30th day after the last day of the reporting period in which the surcharge is collected".

17) In SECTION 68 of the bill, on page 32, line 66, between "commission." and "The" insert "The cost of the audit shall not be assessed against the service provider."

18) In SECTION 79 of the bill, on page 36, line 34, strike "71" and substitute "72".

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

Senator Duncan offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **HB 2914** by inserting new SECTIONS appropriately numbered to read as follows and renumbering the SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. Section 659.043(a), Government Code is amended to read as follows:

(a) A state employee is entitled to longevity pay to be included in the employee's monthly compensation if the employee:

- (1) is a full-time state employee on the first workday of the month;
- (2) is not on leave without pay on the first workday of the month; and

(3) has accrued at least three [~~five~~] years of lifetime service credit not later than the last day of the preceding month.

SECTION \_\_\_\_\_. Section 659.044, Government Code is amended to read as follows:

(a) The monthly amount of longevity pay is \$20 [~~\$4~~] for every three years [~~each year~~] of lifetime service credit.

(b) The amount increases when the 6th, 9th, 12th, 15th, 18th, 21st, 24th, 27th, 30th, 33rd, 36th, 39th, and 42nd [~~10th, 15th, 20th, 25th, 30th, 35th, and 40th~~] years of lifetime service credit are accrued.

(c) An increase is effective beginning with the month following the month in which the 6th, 9th, 12th, 15th, 18th, 21st, 24th, 27th, 30th, 33rd, 36th, 39th, and 42nd [~~10th, 15th, 20th, 25th, 30th, 35th, and 40th~~] years of lifetime service credit are accrued.

(d) An employee may not receive from the state as longevity pay more than \$20 [~~\$4~~] for every three [~~each~~] years of lifetime service credit, regardless of the number of positions the employee holds or the number of hours the employee works each week.

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

Senator Duncan offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **HB 2914** by inserting a new SECTION appropriately numbered to read as follows and renumbering the SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. Section 466.355, Government Code, is amended by adding Subsection (c) to read as follows:

(c) Each August the comptroller shall:

(1) estimate the amount to be transferred to the foundation school fund on or before September 15; and

(2) notwithstanding Subsection (b)(4), transfer the amount estimated in Subdivision (1) to the foundation school fund before August installment payments are made under Section 42.259, Education Code.

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

Senator Duncan offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend **HB 2914** (Senate Committee Printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subsection (d), Section 51.0031, Education Code, is amended to read as follows:

(d) As used in this section, "prudent person standard" is the standard of care described in Article VII, Section 11b, of the Texas Constitution, and means that standard of judgment and care that prudent investors, exercising reasonable care, skill, and caution, would acquire or retain in light of the purposes, terms, distribution requirements, and other circumstances of the fund then prevailing, taking into consideration the investment of all the assets of the fund rather than a single investment [~~persons of ordinary prudence, discretion, and intelligence exercise in the management of their affairs in regard to the investments of their funds considering probable income as well as probable safety of their capital~~].

SECTION \_\_\_\_\_. Subsection (a), Section 163.004, Property Code, is amended to read as follows:

(a) ~~A~~ [~~Except as provided by Subsection (c), the~~] governing board may appropriate for expenditure, for the uses and purposes for which the fund is established, the net appreciation, realized and unrealized, in the fair market value of the assets of an endowment fund over the historic dollar value of the fund to the extent prudent under the standard provided by Section 163.007.

SECTION \_\_\_\_\_. Subsection (e), Section 163.004, Property Code, is repealed.

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

Senator Duncan offered the following amendment to the bill:

#### **Floor Amendment No. 5**

Amend **HB 2914** by adding a new SECTION, appropriately numbered, to read as follows and renumbering subsequent SECTIONS appropriately:

SECTION \_\_\_\_\_. In addition to other amounts appropriated by the 77th Legislature, Regular Session, 2001, for the biennium beginning September 1, 2001, and subject to the restrictions provided under Articles II and IX, Senate Bill No. 1, Acts of the 77th Legislature, Regular Session, 2001 (General Appropriations Act), and contingent on House Bill No. 2604, Acts of the 77th Legislature, Regular Session, 2001, becoming law, the Texas Forest Service is appropriated 15 million dollars for the fiscal year beginning September 1, 2002, from the Volunteer Fire Department Assistance Fund. The Texas Forest Service shall spend money appropriated by this section for the purpose of administering the Rural Volunteer Fire Department Assistance Program.

The amendment was read.

Senator Ellis offered the following amendment to Floor Amendment No. 5:

#### **Floor Amendment No. 5A**

Amend Floor Amendment No. 5 to **HB 2914** as follows:

Amend **HB 2914** by adding the following to the caption:  
"; making an appropriation"

The amendment to Floor Amendment No. 5 was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 5 as amended, the amendment as amended was adopted by a viva voce vote.

Senator Duncan offered the following amendment to the bill:

### Floor Amendment No. 6

Amend **HB 2914** by adding a new SECTION, appropriately numbered, to read as follows, and renumbering subsequent SECTIONS appropriately:

SECTION \_\_\_\_\_. (a) As part of the transfer of personnel and appropriations made by H.B. No. 819, Acts of the 77th Legislature, Regular Session, 2001:

(1) any appropriation to the Texas Department of Economic Development relating to the Office of Rural Affairs is transferred to the Department of Agriculture, including no less than \$212,612 each fiscal year of the 2002-2003 biennium; and

(2) no fewer than 4.0 full-time equivalent positions must be transferred by the Texas Department of Economic Development to the Department of Agriculture.

(b) This section takes effect September 1, 2001, only if H.B. No. 819, Acts of the 77th Legislature, Regular Session, 2001, becomes law.

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

Senator Fraser offered the following amendment to the bill:

### Floor Amendment No. 7

Amend **HB 2914** as follows:

(1) Insert the following appropriately numbered SECTIONS to take effect September 1, 2001:

"SECTION \_\_\_\_\_. Section 404.101, Government Code, is amended to read as follows:

Sec. 404.101. DEFINITIONS. In this subchapter:

(1) "Advisory board" means the Texas treasury safekeeping trust company investment advisory board.

(2) "Participant" means the state, agencies and local political subdivisions of the state, and nonprofit corporations, foundations, and other charitable organizations created on behalf of the state or an agency or local political subdivision of the state authorized to deposit money and securities with the trust company.

(3) "The state and its agencies" includes the Employees Retirement System of Texas and the Teacher Retirement System of Texas.

(4) [~~(2)~~] "Trust company" means the Texas Treasury Safekeeping Trust Company.

SECTION \_\_\_\_\_. Section 404.103, Government Code, is amended by amending Subsection (b) and adding Subsections (e), (f), and (g) to read as follows:

(b) The trust company may enter into contracts, ~~and~~ trust agreements, or other fiduciary instruments with the comptroller, the Federal Reserve System, a depository trust company, and other third parties. The trust company shall be liable under those contracts in accordance with the terms contained in the contracts. Notwithstanding any other statute to the contrary, to the extent permitted by the Texas Constitution and the contracts, trust agreements, or other fiduciary instruments between the trust company, the Federal Reserve System, and a depository trust company, the trust company's obligations shall be guaranteed by the state, and the state expressly waives all defenses of governmental immunity by and on behalf of the trust company, the comptroller, and the state and expressly consents to sue and be sued in federal court or in any court of competent jurisdiction. However, this provision does not alter or affect

the immunity accorded to state officials and employees under state law. The trust company may enter into contracts with the comptroller and the Federal Reserve System to provide any services that the Federal Reserve System makes available, including:

(1) safekeeping book-entry United States Treasury and agency securities owned by the state and its agencies;

(2) using the federal reserve wire transfer system to transfer money and book-entry securities and to settle securities transactions involving book-entry United States Treasury and agency securities owned by the state and its agencies;

(3) collecting, through the Federal Reserve System, checks deposited with the treasury;

(4) receiving payments from and making payments to the federal government on behalf of the state and its agencies;

(5) originating automated clearinghouse transactions or other electronic transfers to make payments on behalf of the state and its agencies, collecting revenues due the state and its agencies, and transferring money between state depositories;

(6) paying warrants drawn on the treasury and presented through the Federal Reserve System for payment; and

(7) safekeeping collateral pledged to secure deposits of public funds.

(e) The trust company may hire employees and may fix their compensation and prescribe their duties or may contract with the comptroller's office for staff support.

(f) The trust company shall develop a fee schedule in the amount necessary to recover costs of service and to retain adequate reserves to support the operations of the trust company.

(g) The trust company is exempt from other state laws regulating or limiting state purchasing or a purchasing decision if the trust company determines that the purchase or decision relates to the fiduciary duties of the trust company. The trust company shall make all purchases of goods and services using purchasing methods that ensure the best value to the trust company and its participants. In determining best value, the trust company may consider the best value standards applicable to state agencies as enumerated in Section 2155.074. The trust company shall develop a plan of operation that includes procedures and standards for the purchases of goods and services using best value methods.

SECTION \_\_\_\_\_. Subsection (c), Section 404.104, Government Code, is amended to read as follows:

(c) The comptroller shall submit to the Legislative Budget Board an audited report regarding the operations of the trust company. The trust company may contract with a certified public accountant or the state auditor to [shall] conduct an independent audit of the operations of the trust company. This subsection does not affect the state auditor's authority to conduct an audit of the trust company in accordance with Chapter 321.

SECTION \_\_\_\_\_. Section 404.105, Government Code, is amended to read as follows:

Sec. 404.105. CAPITAL OR RESERVE [REQUIREMENTS]. The trust company shall hold [have] capital stock and [or] reserve balances outside the treasury in an amount required by applicable regulatory bodies for eligibility for federal reserve services, for participation in a depository trust company, and as necessary to achieve its purposes under Section 404.103[, but the amount may not be more than \$1 million]. The stock of the trust company is an authorized investment for state funds and shall be held by the comptroller, but the amount may not be more than \$1 million.

SECTION \_\_\_\_\_. Section 404.106, Government Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Any net earnings of the trust company attributable to capital stock or investments of capital stock shall be credited annually to the account of the treasury and shall be allocated annually to the funds held and managed by the comptroller in accordance with Section 404.071(a).

(d) The trust company may hold reserve balances or securities as required by the Federal Reserve System or as required for participation in a depository trust company.

SECTION \_\_\_\_\_. Section 404.107, Government Code, is amended to read as follows:

Sec. 404.107. FEES. (a) Any fees or assessments imposed by state law for the incorporation, regulation, or operation of trust companies do not apply to the Texas Treasury Safekeeping Trust Company.

(b) Agencies and local political subdivisions of the state and nonprofit corporations, foundations, and other charitable organizations created on behalf of the state or an agency or local political subdivision of the state that are authorized or required to deposit money and securities with the trust company shall pay the fees established on the trust company's fee schedule.

SECTION \_\_\_\_\_. Subchapter G, Chapter 404, Government Code, is amended by adding Sections 404.108 through 404.116 to read as follows:

Sec. 404.108. TRUST COMPANY INVESTMENT ADVISORY BOARD.

(a) The comptroller may appoint an investment advisory board to advise the comptroller with respect to managing the assets held by the trust company. The advisory board shall provide the comptroller guidance on the investment philosophy that should be pursued in managing the assets under the trust company's control. The advisory board serves in an advisory capacity only and is not a fiduciary with respect to the assets held by the trust company.

(b) The advisory board is composed of seven members appointed by the comptroller with the advice of the governor, lieutenant governor, and speaker of the house of representatives.

(c) The members of the advisory board must have knowledge of or experience in finance, including the management of funds or business operations.

(d) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of appointees.

(e) Each member of the advisory board must be a resident of this state.

(f) The creation, size, composition, and duration of the advisory board is governed exclusively by this subchapter. Chapter 2110 does not apply to the size, composition, or duration of the advisory board.

Sec. 404.109. RESTRICTIONS ON ADVISORY BOARD APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT. A person is not eligible for appointment to the advisory board if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the trust company;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the trust company; or

(3) receives money from the business entity or other organization receiving funds from the trust company that exceeds five percent of the person's gross income for the preceding calendar year.

Sec. 404.110. REMOVAL OF ADVISORY BOARD MEMBERS. The comptroller may remove from the advisory board an advisory board member at will or for any of the following causes:

(1) at the time of the member's appointment, the member did not have the qualifications prescribed by Section 404.108 or was ineligible under Section 404.109;

(2) while serving on the advisory board, the member does not maintain the qualifications prescribed by Section 404.108 or becomes ineligible for appointment under Section 404.109;

(3) for a substantial portion of the member's term, the member is unable to discharge the member's duties because of illness or disability; or

(4) without being excused by a majority vote of the advisory board, the member is absent from more than one-third of the regularly scheduled board meetings that the member is eligible to attend during a calendar year.

Sec. 404.111. ADVISORY BOARD MEMBER TRAINING. (a) Before a member of the advisory board may assume the member's duties, the member must complete at least one course of the training program established under this section.

(b) A training program established under this section shall provide information regarding:

(1) the role and functions of the trust company;

(2) the assets managed by and programs operated by the trust company; and

(3) the statutes applicable to the trust company, including Chapters 551, 552, and 2001.

Sec. 404.112. COMPENSATION; EXPENSES. Members of the advisory board serve without compensation but are entitled to reimbursement for actual and necessary expenses in attending meetings of the advisory board or performing other official duties authorized by the comptroller.

Sec. 404.113. MEETINGS. (a) The advisory board may meet as often as necessary, but shall meet at least twice each year.

(b) Advisory board meetings are subject to Chapter 551.

Sec. 404.114. INVESTMENT MANAGEMENT. (a) The comptroller may delegate investment authority and may contract with private professional investment managers to manage or assist in managing assets held by the trust company.

(b) The comptroller may delegate a power or duty relating to the investment of assets held by the trust company to an employee or agent of the comptroller, including professional investment managers.

Sec. 404.115. PERSONNEL. (a) The comptroller may appoint a person to serve as chief executive officer in managing the trust company and carrying out the policies of the trust company. The chief executive officer and employees of the trust company serve at the will of the comptroller.

(b) The comptroller may delegate any of the comptroller's duties to the chief executive officer and trust company employees.

(c) The chief executive officer or the chief executive officer's designee shall develop a career ladder program and a system of compensation necessary to retain qualified staff.

(d) The chief executive officer or the chief executive officer's designee shall develop a system of annual performance evaluations. Merit pay for trust company employees must be based on the system established under this subsection.

(e) The chief executive officer or the chief executive officer's designee shall prepare and maintain a written policy statement to assure implementation of a program

of equal employment opportunity under which all personnel decisions are made without regard to race, color, disability, religion, age, or national origin.

(f) The chief executive officer shall appoint an internal auditor for the trust company. The appointment of the internal auditor must be approved by the comptroller. The comptroller may require the internal auditor to submit certain reports directly to the comptroller.

(g) Except as provided by this section and Section 404.103(e), trust company employees hired under this subchapter are state employees for all purposes, including accrual of leave time, insurance benefits, retirement benefits, and travel regulations, Chapter 104, Civil Practice and Remedies Code, and Chapter 501, Labor Code.

Sec. 404.116. LIABILITY INSURANCE FOR CERTAIN BOARD MEMBERS, OFFICIALS, AND STAFF. (a) The trust company may purchase or otherwise acquire insurance to protect members of the advisory board and the trust company staff.

(b) Insurance purchased or acquired by the trust company under this section may:  
(1) protect against any type of liability to third persons that might be incurred while conducting trust company business; and

(2) provide for all costs of defending against such liability, including court costs and attorney's fees.

(c) This section does not authorize the purchase or acquisition of insurance to protect against liability not described in Subsection (b)."

(2) Renumber the existing SECTIONS of the bill and revise cross-references to existing SECTIONS of the bill accordingly.

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

Senator Cain offered the following amendment to the bill:

### **Floor Amendment No. 8**

Amend **HB 2914** by adding appropriately new numbered sections to read as follows:

SECTION \_\_\_\_\_. Subchapter C, Chapter 311, Government Code, is amended by adding Section 311.034 to read as follows:

Sec. 311.034. WAIVER OF SOVEREIGN IMMUNITY. In order to preserve the legislature's interest in managing state fiscal matters through the appropriations process, a statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language. In a statute, the use of "person," as defined by Section 311.005 to include governmental entities, does not indicate legislative intent to waive sovereign immunity unless the context of the statute indicates no other reasonable construction.

SECTION \_\_\_\_\_. Section 2260.005, Government Code, is amended to read as follows:

Sec. 2260.005. EXCLUSIVE PROCEDURE. Subject to Section 2260.007, the ~~[The]~~ procedures contained in this chapter are exclusive and required prerequisites to suit in accordance with Chapter 107, Civil Practice and Remedies Code.

SECTION \_\_\_\_\_. Subchapter A, Chapter 2260, Government Code, is amended by adding Section 2260.007 to read as follows:

Sec. 2260.007. LEGISLATIVE PERMISSION TO SUE. (a) Notwithstanding Section 2260.005, the legislature retains the authority to deny or grant a waiver of immunity to suit against a unit of state government by statute, resolution, or any other means the legislature may determine appropriate.

(b) This chapter does not and may not be interpreted to:

(1) divest the legislature of the authority to grant permission to sue a unit of state government on the terms, conditions, and procedures that the legislature may specify in the measure granting the permission;

(2) require that the legislature, in granting or denying permission to sue a unit of state government, comply with this chapter; or

(3) limit in any way the effect of a legislative grant of permission to sue a unit of state government unless the grant itself provides that this chapter may have that effect.

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

**(Senator Brown in Chair)**

**(President in Chair)**

Senator Van de Putte offered the following amendment to the bill:

**Floor Amendment No. 9**

Amend **HB 2914**:

SECTION \_\_\_\_\_. Section 2155.074(b), Government Code, is amended to read as follows:

(b) In determining the best value for the state, the purchase price, ~~and~~ whether the goods or services meet specifications, and the the vendor's anticipated economic impact on the state, including sales, ad valorem tax revenue, franchise taxes paid, and any gain or loss of jobs, are the most important considerations. . . .

SECTION \_\_\_\_\_. Subchapter H, Chapter 2155, Government Code, is amended by adding Section 2155.4439 to read as follows:

Sec. 2155.4439. PREFERENCE TO TEXAS BIDDERS. (a) The commission and all state agencies procuring goods or services may give preference to a Texas bidder. (b) In this section, "Texas bidder" means a bidder whose principal place of business is in this state, provided that a permanently staffed, full-time office is maintained at the place of business and that the bidder's principal decision makers conduct the daily affairs of the bidder at the place of business. The mere presence of an employee or representative does not establish that a location is the principle place of business. (c) In the event of a conflict between this section and Section 2252.002, this section controls.

SECTION \_\_\_\_\_. Section 466.105(a), Government Code, is amended to read as follows: (a) A contract for the acquisition of provision of facilities, supplies, equipment, materials, or services related to the operation of the lottery is not subject to:

(1) Chapter 2054 or 2254; or

(2) Subtitle D, Title 10, except that Section 2155.4439 applies to the contract.

SECTION \_\_\_\_\_. Sections 2155.444(a) and (b), Government Code, are amended to read as follows:

(a) To the extent consistent with Section 2155.4439, the [The] commission and all state agencies making purchases of goods, including agricultural products, shall give preference to those produced or grown in this state or offered by Texas bidders as follows. . . .

(b) Except as provided by Section 2155.4439, if [H] goods, including agricultural products, produced or grown in this state or offered by Texas bidders

are not equal in cost and quality to other products, then goods, including agricultural products, produced or grown in other states of the United States shall be given preference over foreign products if the cost to the state and quality are equal.

The amendment was read.

On motion of Senator Duncan, Floor Amendment No. 9 was tabled by the following vote: Yeas 18, Nays 12, Present-not voting 1.

Yeas: Armbrister, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Harris, Haywood, Jackson, Lindsay, Moncrief, Nelson, Ogden, Sibley, Staples, Wentworth.

Nays: Barrientos, Bernsen, Gallegos, Lucio, Madla, Shapiro, Shapleigh, Truan, Van de Putte, West, Whitmire, Zaffirini.

Present-not voting: Mr. President.

Senator Carona offered the following amendment to the bill:

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

Amend **HB 2914**, on page 7, after line 9 (Committee Printing) by adding the following as new SECTION 17 and renumbering subsequent sections accordingly:

SECTION 17. Chapter 403, Government Code, is amended by adding Subchapter P to read as follows:

#### SUBCHAPTER P. PRODUCT DEVELOPMENT AND SMALL BUSINESS INCUBATORS

Sec. 403.401. DEFINITIONS. In this subchapter:

(1) "Board" means the Product Development and Small Business Incubator Board.

(2) "Comptroller" includes the designee of the comptroller.

(3) "Financing" means a loan, loan guarantee, or equity investment from the product fund to a person for use in the development and production of a product in this state, or a grant, loan, or loan guarantee from the small business fund to a person for use in the development of a small business in this state.

(4) "Office" means the office of the comptroller.

(5) "Product" includes an invention, device, technique, or process, without regard to whether a patent has been or could be granted, that has advanced beyond the theoretical stage and has or is readily capable of having a commercial application. The term does not include pure research.

(6) "Product fund" means the Texas product development fund.

(7) "Program" means the product development program or the small business incubator program.

(8) "Small business fund" means the Texas small business incubator fund.

Sec. 403.402. PRODUCT DEVELOPMENT AND SMALL BUSINESS INCUBATOR BOARD. (a) The Product Development and Small Business Incubator Board is created in the office.

(b) The board shall administer the programs, the product fund, and the small business fund.

Sec. 403.403. MEMBERS OF THE BOARD; APPOINTMENT; TERMS OF OFFICE. (a) The board consists of the comptroller and eight persons appointed by the governor.

(b) In appointing members of the board, the governor shall appoint:

(1) two persons having significant business leadership experience in technology, particularly experience with the transfer of research results into commercial applications;

(2) two persons employed by institutions of higher education of this state who have experience in technological research and its commercial applications;

(3) two persons experienced and knowledgeable in structuring and providing financing for technological products or businesses; and

(4) two persons who reside in a county of this state with above state average unemployment and below state average per capita income and who have experience and knowledge in technology-related business growth.

(c) Appointed members of the board serve two-year staggered terms with the terms of four members expiring February 1 of each odd-numbered year and the terms of four members expiring February 1 of each even-numbered year.

(d) The comptroller is the presiding officer of the board.

(e) The board shall appoint a secretary of the board whose duties may be prescribed by law and by the board.

(f) Appointed members of the board serve without pay but are entitled to reimbursement for their actual expenses incurred in attending meetings of the board or in performing other work of the board if that work is approved by the comptroller.

Sec. 403.404. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if an appointed member:

(1) cannot because of illness or disability discharge the member's duties for a substantial part of the term for which the member is appointed; or

(2) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that the action was taken when a ground for removal of a board member existed.

Sec. 403.405. TRAINING OF BOARD MEMBERS. (a) Before an appointed member of the board may assume the member's duties, the member must complete at least one course of the training program established under this section.

(b) A training program established under this section shall provide information to the member regarding:

(1) the enabling legislation that created the board;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the board;

(6) the results of the most recent formal audit of the board;

(7) the requirements of the:

(A) open meetings law, Chapter 551;

(B) open records law, Chapter 552; and

(C) administrative procedure law, Chapter 2001;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

Sec. 403.406. MEETINGS. (a) The board shall hold regular meetings in Austin and other meetings at places and times scheduled by the board in formal sessions and called by the comptroller.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(c) The board shall make minutes of all meetings available in the board's office for public inspection.

Sec. 403.407. APPLICABILITY OF OPEN MEETINGS LAW AND ADMINISTRATIVE PROCEDURE LAW. The board is subject to the open meetings law, Chapter 551, and the administrative procedure law, Chapter 2001.

Sec. 403.408. STAFF. (a) The employees of the comptroller selected by the comptroller for that purpose serve as the staff of the board.

(b) The comptroller shall select and supervise the staff of the board and perform other duties delegated to the comptroller by the board.

(c) The comptroller shall provide to members of the board and to board staff, as often as necessary, information regarding their qualifications for office or employment under this subchapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(d) The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the comptroller and the office.

Sec. 403.409. PROGRAM AND FACILITY ACCESSIBILITY. (a) The board shall comply with federal and state laws related to program and facility accessibility.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs and services.

Sec. 403.410. POWERS OF THE BOARD; BONDS. (a) The board has the powers necessary and reasonable to carry out this subchapter and may adopt rules, policies, and procedures necessary or reasonable to implement this subchapter.

(b) The board may issue general obligation bonds, up to the amounts authorized and as provided by Section 71, Article XVI, Texas Constitution, to fund the program.

(c) Not more than an amount equal to five percent of the total amount of bonds issued may be used to pay administrative fees involved in selling the bonds.

Sec. 403.411. TEXAS PRODUCT DEVELOPMENT FUND. (a) The Texas product development fund is a revolving fund in the state treasury.

(b) The product fund is composed of proceeds of bonds issued under this subchapter, financing application fees, loan repayments, guarantee fees, royalty receipts, dividend income, money appropriated by the legislature for authorized purposes of the product fund, amounts received by the state from loans, loan guarantees, and equity investments made under this subchapter, amounts received by the state from federal grants or other sources, and any other amounts received under this subchapter and required by resolution of the board to be deposited in the product fund. The product fund contains a program account, an interest and sinking account, and other accounts that the board authorizes to be created and maintained. Money in the product fund is available for use by the board under this subchapter. Notwithstanding any other provision of this subchapter, any money in the product fund may be used for debt service.

(c) Money in the program account of the product fund, minus the costs of issuance of bonds under this subchapter and necessary costs of administering the product fund, may be used only to provide financing to aid in the development and production, including the commercialization, of new or improved products in this state. The board shall provide financing from the product fund on the terms and conditions that the board determines to be reasonable, appropriate, and consistent with the purposes and objectives of the product fund and this subchapter, for the purpose of aiding in the development and production of new or improved products in this state.

Sec. 403.412. SMALL BUSINESS INCUBATOR FUND. (a) The Texas small business incubator fund is a revolving fund in the state treasury.

(b) The small business fund is composed of proceeds of bonds issued under this subchapter, financing application fees, loan repayments, guarantee fees, royalty receipts, dividend income, money appropriated by the legislature for authorized purposes of the small business fund, amounts received by the state from loans, loan guarantees, and equity investments made under this subchapter, amounts received by the state from federal grants or other sources, and any other amounts received under this subchapter and required by resolution of the board to be deposited in the small business fund. The small business fund contains a project account, an interest and sinking account, and other accounts that the board authorizes to be created and maintained. Money in the small business fund is available for use by the board under this subchapter. Notwithstanding any other provision of this subchapter, any money in the small business fund may be used for debt service.

(c) Money in the project account of the small business fund, minus the costs of issuance of bonds under this subchapter and necessary costs of administering the small business fund, may be used only to provide financing to foster and stimulate the development of small businesses in this state. The board shall provide financing from the small business fund on the terms and conditions that the board determines to be reasonable, appropriate, and consistent with the purposes and objectives of the small business fund and this subchapter, for the purpose of fostering and stimulating the development of new or existing small businesses in this state.

Sec. 403.413. ELIGIBLE PRODUCTS AND BUSINESSES; FINANCING. (a) Financing may be made under this subchapter only for a product or small business approved by the board.

(b) In determining eligible products and small businesses, the board shall give special preference to products or businesses in the areas of biotechnology and biomedicine that have the greatest likelihood of commercial success, job creation, and job retention in this state. The board shall give further preference to providing financing to projects or businesses that are:

(1) grantees under the small business innovation research program established under 15 U.S.C. Section 638, as amended;

(2) companies formed in this state to commercialize research funded at least in part with state funds;

(3) applicants that have acquired other sources of financing;

(4) companies formed in this state and receiving assistance from designated state small business development centers; or

(5) applicants who are residents of this state doing business in this state and performing financed activities predominantly in this state.

(c) The board shall adopt rules governing the terms and conditions of the financing, specifically including requirements for appropriate security or collateral,

equity interest, and the rights and remedies of the board and office in the event of a default on the loan. The rules must include a requirement that applicants report to the board on the use of money distributed through either fund.

(d) Before approving the provision of financing to a person, the board shall enter into an agreement with the person under which the board will obtain an appropriate portion of royalties, patent rights, equitable interests, or a combination of those royalties, rights, and interests from or in the product or proceeds of the product for which financing is requested. Contracts executed under this subchapter must include agreements to ensure proper use of funds and the receipt of royalties, patent rights, or equity interest, as appropriate.

(e) The board may appoint an advisory committee of experts in the areas of biotechnology and biomedicine to review projects and businesses seeking financing from the board.

(f) The amount of financing provided to a single recipient may not exceed 10 percent of the total amount of bonds issued.

(g) A claim of the state for a payment owed to the state under this subchapter by a person who has been provided financing has priority over all other claims against the person.

Sec. 403.414. APPLICATION PROCESS. (a) To apply for financing from the board, an applicant shall submit to the board:

(1) an application for financing on a form prescribed by the board; and

(2) a reasonable application fee set by the board.

(b) The application must include a business plan, containing the information required by the board, including at a minimum:

(1) information regarding:

(A) the history and financial condition of the applicant, including the applicant's income statement;

(B) the applicant's present markets and market prospects; and

(C) the integrity of the applicant's management;

(2) a statement of the feasibility of the product for which financing is requested, including the state of development of any product to be developed and the proposed schedule of its commercialization; and

(3) if applicable, documentation of attempts to obtain private financing.

(c) The board shall determine, with respect to each application for financing, whether:

(1) the product or business for which financing is requested is economically sound;

(2) there is a reasonable expectation that the product or business will be successful;

(3) the product or business will create or preserve jobs and otherwise benefit the economy of the state;

(4) the applicant has the management resources and other funding to complete the project;

(5) financing is necessary because full financing is unavailable in traditional capital markets or credit has been offered on terms that would preclude the success of the project; and

(6) there is reasonable assurance that the potential revenues to be derived from the sale of the product will be sufficient to repay any financing approved by the board.

(d) After considering the application and all other information it considers relevant, the board shall approve or deny the application and promptly notify the applicant of its decision.

Sec. 403.415. INFORMATION CONFIDENTIAL. (a) Information described by Subsection (b) collected, assembled, or maintained by or for the board is confidential and may not be disclosed by the board, the comptroller, or the office.

(b) This section applies to information in any form provided by or on behalf of an applicant for financing or a recipient of financing under this subchapter, including information contained in, accompanying, or derived from any application or report, that relates to a product, to the development, application, manufacture, or use of a product, or to the markets, market prospects, or marketing of a product, and that is proprietary information of actual or potential commercial value to the applicant or recipient that has not been disclosed to the public. Confidential information includes scientific and technological information, including computer programs and software, and marketing and business operation information, regardless of whether the product to which the information relates is patentable or capable of being registered under copyright or trademark laws or has a potential for being sold, traded, or licensed for a fee. This section does not make confidential information in an account, voucher, or contract relating to the receipt or expenditure of public funds by the board or the comptroller under this subchapter.

(c) Any application for financing that is withdrawn by the applicant before approval or funding or that is denied by the board shall be returned to the applicant promptly on request, together with all materials submitted by or on behalf of the applicant that relate to the application, except that the board may retain a record of the submission and disposition of the application that does not include any information described by Subsection (b).

Sec. 403.416. PROGRAM COORDINATION. The board and office shall coordinate the administration and funding of the programs.

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

Senator Haywood offered the following amendment to the bill:

### **Floor Amendment No. 11**

Amend **HB 2914** by adding the following section and renumbering appropriately:  
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION \_\_\_\_\_. Subchapter K, Chapter 659, Government Code, is amended by adding Sections 659.2551 and 659.2552 to read as follows:

Sec. 659.2551. PERFORMANCE LINKED TO AGENCY GOALS. Each state agency shall adopt policies to ensure that an employee's performance expectations are linked to the goals in the agency's strategic plan adopted under Chapter 2056.

Sec. 659.2552. TASK FORCE TO EVALUATE EMPLOYEE COMPENSATION SYSTEMS. (a) The task force is composed of:

(1) a representative of:

(A) the governor's office, appointed by the governor;

(B) the state auditor's office, appointed by the state auditor;

(C) the comptroller's office, appointed by the comptroller; and

(D) the Legislative Budget Board, appointed by the director; and

(2) the following representatives, appointed by the governor:

(A) three representatives from state agencies that employ fewer than 100 full-time employees;

(B) three representatives from state agencies that employ at least 100 but fewer than 1,000 full-time employees; and

(C) three representatives from state agencies that employ 1,000 or more full-time employees.

(b) The representative of the state auditor's office shall serve as the presiding officer of the task force.

(c) The task force shall:

(1) evaluate the strengths and weaknesses of the current merit increase system for compensating employees;

(2) identify statewide opportunities for funding pay-for-performance policies and practices to supplement current efforts at recruiting and retaining employees; and

(3) provide recommendations on those matters to the legislature not later than January 1, 2003.

(d) A member of the task force serves at the will of the appointing entity.

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

Senator Wentworth offered the following amendment to the bill:

### **Floor Amendment No. 12**

Amend **HB 2914** as follows:

Insert the following appropriately numbered SECTION and renumber SECTIONS to conform:

SECTION \_\_\_\_\_. Section 2252.031, Government Code, is amended to read as follows:

Sec. 2252.031. DEFINITIONS. In this subchapter:

(6) "Subcontractor" means a person who provides public work, labor, or material to fulfill an obligation to a prime contractor or subcontractor for the performance or installation of any work required by a public works contract.

SECTION \_\_\_\_\_. Section 2252.032, Government Code, is amended to read as follows:

Sec. 2252.032. RETAINAGE. (a) A governmental entity shall:

(1) deposit in an interest-bearing account the retainage of a public works contract [that provides for retainage of more than five percent of the periodic contract payment]; and

(2) pay the interest earned on the retainage to the prime contractor [on completion of the contract].

(b) A prime contractor shall pay to a subcontractor from whom retainage is withheld the percentage of the interest received from a governmental entity that is attributable to the subcontractor's work.

(c) A subcontractor shall pay to its subcontractor from whom retainage is withheld the percentage of the interest received from the prime contractor that is attributable to its subcontractor's work.

(d) A person obligated to pay interest under Subsection (a), (b), or (c) shall pay the interest within the period prescribed for payment by Chapter 2251.

(e) If a governmental entity is obligated to pay interest under this section and does not make the interest payments within the period prescribed by Subsection (d), interest accrues for the overdue payments in the manner and at the rate prescribed by Chapter 2251, less interest of the interest-bearing account.

(f) If a prime contractor or subcontractor is obligated to pay interest under this section and does not make the interest payments within the period prescribed by Subsection (d), interest accrues for the overdue payments in the manner and at the rate prescribed by Chapter 2251.

The amendment was read.

Question—Shall Floor Amendment No. 12 to **HB 2914** be adopted?

**AT EASE**

The President at 5:55 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

### **IN LEGISLATIVE SESSION**

The President at 6:05 p.m. called the Senate to order as In Legislative Session.

Question—Shall Floor Amendment No. 12 to **HB 2914** be adopted?

On motion of Senator Wentworth and by unanimous consent, Floor Amendment No. 12 was withdrawn.

Senator Brown offered the following amendment to the bill:

#### **Floor Amendment No. 13**

Amend **HB 2914** (senate committee printing) by:

- (1) Adding the following section to the bill, numbered appropriately; and
- (2) Renumbering the sections of the bill accordingly:

SECTION \_\_\_\_\_. (a) **RETROFITTING OF RECIPROCATING INTERNAL COMBUSTION ENGINES ASSOCIATED WITH PIPELINES:**

Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.051865 to read as follows:

Sec. 382.051865. REIMBURSEMENT PROGRAM FOR CERTAIN EMISSIONS REDUCTIONS FROM RECIPROCATING INTERNAL COMBUSTION ENGINES ASSOCIATED WITH PIPELINES. (a) The commission by rule may develop a program for the reduction of emissions of nitrogen oxides from reciprocating internal combustion engines associated with pipelines that are required by this subchapter to reduce hourly emissions of nitrogen oxides by at least 50 percent. In developing a program under this section the commission must cooperate with:

- (1) local governments;
- (2) agencies, departments, and political subdivisions of the state; and
- (3) the United States and its agencies.

(b) The commission may authorize the executive director to enter into contracts with a public agency, private person, or other entity for the purpose of implementing the emissions reduction program developed under this section.

(c) The emissions reduction program may include incentives as developed by the commission for nitrogen oxides emissions reduction projects for reciprocating internal combustion engines described by Subsection (a), including a partial reimbursement for the capital cost of installing technology to reduce the emissions. The incentives may be applied only to expenses of projects to achieve those reductions of a reciprocating internal combustion engine's hourly emission's of nitrogen oxides only to the extent the reductions exceed 30 percent and do not exceed 50 percent of the engine's emissions before modification.

(d) Rules adopted under this section must include criteria for the determining eligibility for an emissions reduction project incentive under the program. To be eligible under the criteria, a facility must:

(1) be subject to the requirement under this subchapter that it reduce emissions by 50 percent;

(2) be reducing its hourly emissions of nitrogen oxides by at least 50 percent; and

(3) be located in the East Texas region established by this subchapter for purposes of compliance with permit requirements for facilities affected by Section 382.0518(g).

(c) The commission may not provide incentives that:

(1) exceed 50 percent of the capital cost, excluding interest, of the emissions reduction project for which incentives are sought;

(2) exceed \$100,000 for each emissions reduction project;

(3) exceed \$250,000 for any person;

(4) will be applied to an emissions reduction project where a portion of the reductions generated are used to offset the emissions reductions required to be made at another facility;

(5) pay any part of the expenses of reducing hourly nitrogen oxides emissions from a reciprocating internal combustion engine by 30% or less; or

(6) will be used for a project under which the reductions to be made are required by a federal or state law, regulation, permit, or order other than the requirement provided by this subchapter to reduce hourly nitrogen oxides emissions by 50 percent.

(e) This section does not affect the responsibility or liability of an owner or operator of a reciprocating internal combustion engine to reduce emissions under this chapter or a rule, permit or order adopted under this chapter by the commission.

(f) In addition to other requirements imposed by the commission, to be eligible for an incentive under the program established under this section, an emissions reduction project must be:

(1) initiated on or before September 1, 2006; and

(2) completed before March 1, 2007.

(g) The commission may not pay or otherwise provide a financial incentive for an emissions reduction project before the project is complete. The commission may require verification of the reductions associated with the project before the commission pays an incentive. The commission may not pay or otherwise provide a financial incentive on or after March 1, 2007.

(h) Notwithstanding any other law, gifts or contributions by an electric utility or an affiliated power generating company to a program implemented under this section shall be:

(1) considered tangible or intangible capital costs to improve air quality;

(2) deemed to be incurred before January 1, 2002;

(3) included in the electric utility's generation-related invested capital; and

(4) deemed to be a cost to offset the emission of airborne contaminants from electric generating facilities that is:

(A) an essential component in achieving compliance with a national ambient air quality standard;

(B) deemed to be the most cost effective after consideration of alternative measures; and

(C) consistent with the air quality goals and policies of the commission.

(i) This section expires March 1, 2007.

(b) EMISSIONS REDUCTIONS INCENTIVES ACCOUNT:

(1) The comptroller of public accounts shall establish an account within the clean air account no. 151 to be known as the emissions reductions incentives account.

(2) The emissions reductions incentives account consists of money from:

(A) gifts, grants, or donations to the account for a designated or general use; and

(B) money from any other source the legislature designates.

(3) The commission may use the money in the emissions reductions incentives account to pay for emissions reduction project incentives under a program developed under Section 382.051865, Health and Safety Code, and administrative expenses associated with providing the incentives or the incentive program established under that section.

(4) The emissions reductions incentives account is exempt from the application of Section 403.095, Government Code.

(c) APPROPRIATIONS:

(1) The following amounts are appropriated to Texas Natural Resource Conservation Commission to provide incentives for the reduction of air emissions from reciprocating internal combustion engines associated with pipelines:

(A) up to \$16,200,000 for the fiscal year beginning on September 1, 2001 from the emissions reductions incentives account within the clean air account no. 151;

(B) all interest earned on money in the emissions reductions incentives account within the clean air account no. 151 during the fiscal year beginning on September 1, 2001, for that fiscal year;

(C) any balance in the emissions reductions incentives account within the clean air account no. 151 from the appropriation made by Subsections (a)(1) and (2) unexpended as of August 31, 2002, for the fiscal year beginning on September 1, 2002; and

(D) all interest earned on the emissions reductions incentives account during the fiscal year beginning on September 1, 2002, for that fiscal year.

(d) This section takes effect only if legislation of the 77th Legislature, Regular Session, 2001, authorizing the Texas Natural Resource Conservation Commission to require hourly emissions reductions of nitrogen oxides of at least 50 percent from reciprocating internal combustion engines associated with pipelines is enacted and becomes law.

The amendment was read.

Senator Brown offered the following amendment to Floor Amendment No. 13:

**Floor Amendment No. 13A**

Amend Floor Amendment No. 13 to **HB 2914** as follows:

Strike Subsection (c) on page 2 of Sec. 382.051865.

The amendment to Floor Amendment No. 13 was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 13 as amended, the amendment as amended was adopted by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

**Floor Amendment No. 14**

Amend **HB 2914** by adding the following appropriately numbered SECTION to the bill and renumbering existing SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. In addition to other amounts appropriated by the 77th Legislature, Regular Session, 2001, the following amounts are appropriated from the general revenue fund to components of the Texas State Technical College, as specified, for the purpose of Institutional Enhancement:

(1) \$250,000 for the fiscal year beginning September 1, 2001, and \$250,000 for the fiscal year beginning September 1, 2002, to Texas State Technical College - Harlingen;

(2) \$250,000 for the fiscal year beginning September 1, 2001, and \$250,000 for the fiscal year beginning September 1, 2002, to Texas State Technical College - West Texas;

(3) \$250,000 for the fiscal year beginning September 1, 2001, and \$250,000 for the fiscal year beginning September 1, 2002, to Texas State Technical College - Marshall; and

(4) \$250,000 for the fiscal year beginning September 1, 2001, and \$250,000 for the fiscal year beginning September 1, 2002, to Texas State Technical College - Waco.

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

Senator Shapleigh offered the following amendment to the bill:

**Floor Amendment No. 15**

Amend **HB 2914** (Senate committee report) as follows:

(1) Insert a new section as follows:

SECTION \_\_\_\_\_. Amend Sec. 403.014(b), Government Code, to read as follows:

(b) The report must include:

(1) an analysis of each special provision that reduces the amount of tax payable, to include an estimate of the loss of revenue for a six-year period including the current fiscal biennium and a citation of the statutory or legal authority for the provision; and

(2) for provisions reducing revenue by more than one percent of total revenue for a tax covered by this section:

(A) the effect of each provision on the distribution of the tax burden by income class and industry or business class and by ethnic group, as appropriate; and

(B) The effect of each provision on total income by income class and by ethnic group, as appropriate.

(2) Insert a new section as follows:

SECTION \_\_\_\_\_. Subsection (c), Section 403.0141, Government Code, is amended to read as follows:

(c) To the extent data is available, the incidence impact analysis under Subsections (a) and (b):

(1) shall evaluate the tax burden:

(A) on the overall income distribution, using a systemwide incidence measure or other appropriate measures of equality and inequality; and

(B) on income classes, including, at a minimum, quintiles of the income distribution, on renters and homeowners, on industry or business classes, as appropriate, and on various types of business organizations; and

(C) on ethnic groups:

(2) may evaluate the tax burden:

(A) by other appropriate taxpayer characteristics, such as whether the taxpayer is a farmer, rancher, retired elderly, or resident or nonresident of the state; and

(A) by distribution of impact on consumers, labor, capital, and out-of-state persons and entities;

(3) shall evaluate the effect of each tax on total income by income group and ethnic group; and

(4) shall:

(A) use the broadest measure of economic income for which reliable data is available; and

(B) include a statement of the incidence assumptions that were used in making the analysis.

(3) Renumber succeeding sections as appropriate.

The amendment was read.

On motion of Senator Duncan, Floor Amendment No. 15 was tabled by the following vote: Yeas 16, Nays 14, Present-not voting 1.

Yeas: Armbrister, Bivins, Carona, Duncan, Fraser, Harris, Haywood, Jackson, Lindsay, Nelson, Ogden, Shapiro, Sibley, Staples, Wentworth, Whitmire.

Nays: Barrientos, Bernsen, Brown, Cain, Ellis, Gallegos, Lucio, Madla, Moncrief, Shapleigh, Truan, Van de Putte, West, Zaffirini.

Present-not voting: Mr. President.

Senator Bivins offered the following amendment to the bill:

### **Floor Amendment No. 16**

Amend **HB 2914** by inserting the appropriately numbered sections:

SECTION \_\_\_\_\_. Section 201.052, Tax Code, is amended to read as follows:

Sec. 201.052. Rate of Tax. (a) Each month, the comptroller shall certify the average closing cost of gas, as recorded on the New York Mercantile Exchange (NYMEX), for the previous three months. The comptroller shall publish certifications under this subsection in the Texas Register. The tax imposed by this chapter on gas produced and saved during a particular month is at the rate of:

(1) 7.5 percent of the market value of gas produced and saved in this state by the producer during that month if the average closing price of gas certified by the comptroller for the previous three-month period is more than \$3 per MMBtu;

(2) five percent of the market value of gas produced and saved in this state by the producer during that month if the average closing price of gas certified by the comptroller for the previous three-month period is equal to or more than \$1.25 per MMBtu but not more than \$3 per MMBtu; and

(3) two percent of the market value of gas produced and saved in this state by the producer during that month if the average closing price of gas certified by the comptroller for the previous three-month period is less than \$1.25 per MMBtu.

(b) The minimum tax rate on sweet and sour gas produced and saved in this state is 121/1,500 of one cent for each 1,000 cubic feet.

(c) If the tax is paid on gas at a higher rate than required by Subsection (a), the person paying the tax is entitled to a credit against taxes imposed by this chapter for the amount overpaid. To receive the credit, the person must apply to the comptroller for the credit not later than the expiration of the applicable period for filing a tax refund under Section 111.104.

SECTION \_\_\_\_\_. Subchapter B, Chapter 201, Tax Code, is amended by adding Section 201.0525 to read as follows:

Sec. 201.0525. TAX CREDIT FOR CERTAIN TAX PAYMENTS. (a) A person paying a tax under this chapter during the period beginning on September 1, 2001, and ending on August 31, 2004, is entitled to a credit against taxes imposed by this chapter in an amount equal to the difference between:

(1) the amount of taxes the person paid under this chapter during that period under the tax rates prescribed by Section 201.052, as that section existed during that period; and

(2) the amount of taxes the person would have paid under this chapter during that period under the tax rates prescribed by Section 201.052, as that section exists on September 1, 2004.

(b) To receive the credit, the person must apply to the comptroller for the credit on or after September 1, 2004, and not later than the expiration of the applicable period for filing a tax refund under Section 111.104.

SECTION \_\_\_\_\_. Section 202.052, Tax Code, is amended to read as follows:

Sec. 202.052. RATE OF TAX. (a) Each month, the comptroller shall certify the average closing cost of West Texas Intermediate crude oil, as recorded on the New York Mercantile Exchange (NYMEX), for the previous three months. The comptroller shall publish certifications under this subsection in the Texas Register. The tax imposed by this chapter on oil produced in this state during a particular month is at the rate of:

(1) 4.6 percent of the market value of oil produced in this state during that month if the average closing price of West Texas Intermediate crude oil certified by the comptroller for the previous three-month period is more than \$20 per barrel, or 4.6 cents for each barrel of 42 standard gallons of oil produced in this state during that month, whichever rate results in the greater amount of tax;

(2) 2.3 percent of the market value of oil produced in this state during that month if the average closing price of West Texas Intermediate crude oil certified by the comptroller for the previous three-month period is equal to or more than \$12 but not more than \$20 per barrel, or 2.3 cents for each barrel of 42 standard gallons of oil produced in this state during that month, whichever rate results in the greater amount of tax; and

(3) one percent of the market value of oil produced in this state during that month if the average closing price of West Texas Intermediate crude oil certified by the comptroller for the previous three-month period is less than \$12, or one cent for each barrel of 42 standard gallons of oil produced in this state during that month, whichever rate results in the greater amount of tax.

(b) For oil produced in this state from a new or expanded enhanced recovery project that qualifies under Section 202.054 of this code, the rate of the tax imposed by this chapter is one-half of the applicable rate prescribed by Subsection (a) [2.3 percent of the market value of the oil].

(c) The exemptions described by Sections 202.056 and 202.059 apply to oil produced in this state from a well that qualifies under Section 202.056 or 202.059, subject to the certifications and approvals required by those sections.

(d) If the tax is paid on oil at a higher rate than required by Subsection (a) or (b), the person paying the tax is entitled to a credit against taxes imposed by this chapter for the amount overpaid. To receive the credit, the person must apply to the comptroller for the credit not later than the expiration of the applicable period for filing a tax refund under Section 111.104.

SECTION \_\_\_\_\_. Subchapter B, Chapter 202, Tax Code, is amended by adding Section 202.0525 to read as follows:

Sec. 202.0525. TAX CREDIT FOR CERTAIN TAX PAYMENTS. (a) A person paying a tax under this chapter during the period beginning on September 1, 2001, and ending on August 31, 2004, is entitled to a credit against taxes imposed by this chapter in an amount equal to the difference between:

(1) the amount of taxes the person paid under this chapter during that period under the tax rates prescribed by Section 202.052, as that section existed during that period; and

(2) the amount of taxes the person would have paid under this chapter during that period under the tax rates prescribed by Section 202.052, as that section exists on September 1, 2004.

(b) To receive the credit, the person must apply to the comptroller for the credit on or after September 1, 2004, and not later than the expiration of the applicable period for filing a tax refund under Section 111.104.

SECTION \_\_\_\_\_. (a) Sections 1.01 through 1.04 of this Act take effect September 1, 2004. This section takes effect September 1, 2001.

(b) Beginning September 1, 2001, the comptroller of public accounts shall monitor market prices to determine the validity of any credit applications submitted under Sections 201.0525 and 202.0525, Tax Code, as added by this Act.

(c) As soon as practicable after the effective date of Sections 1.01 through 1.04 of this Act, the comptroller of public accounts shall perform the initial certification determination required by Sections 201.052 and 202.052, Tax Code, as amended by this Act. The initial certification determination must cover the three-month period beginning on June 1, 2004.

(d) The change in law made by Sections 1.01 through 1.04 of this Act does not affect tax liability accruing before the effective date of those sections. That liability continues in effect as if Sections 1.01 through 1.04 of this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION \_\_\_\_\_. Section 201.052, Tax Code, is amended to read as follows:

Sec. 201.052. RATE OF TAX. (a) The tax imposed by this chapter is at the rate of 7.5 percent of the market value of gas produced and saved in this state by the producer.

(b) The minimum tax rate on sweet and sour gas produced and saved in this state is 121/1,500 of one cent for each 1,000 cubic feet.

SECTION \_\_\_\_\_. Section 202.052, Tax Code, is amended to read as follows:

Sec. 202.052. RATE OF TAX. (a) The tax imposed by this chapter is at the rate of 4.6 percent of the market value of oil produced in this state or 4.6 cents for each barrel of 42 standard gallons of oil produced in this state, whichever rate results in the greater amount of tax.

(b) For oil produced in this state from a new or expanded enhanced recovery project that qualifies under Section 202.054 of this code, the rate of the tax imposed by this Chapter is 2.3 percent of the market value of the oil.

(c) The exemptions described by Sections 202.056 and 202.059 apply to oil produced in this state from a well that qualifies under Section 202.056 or 202.059, subject to the certifications and approvals required by those sections.

SECTION \_\_\_\_\_. (a) This article takes effect September 1, 2006, and applies to gas and oil produced on or after that date. Gas and oil produced before the effective date of this article are governed by the law in effect when the gas and oil were produced, and that law is continued in effect for that purpose.

(b) The change in law made by this article does not affect tax liability accruing before the effective date of this article. That liability continues in effect as if this article had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

The amendment was read and was adopted by the following vote: Yeas 19, Nays 9, Present-not voting 3.

Yeas: Armbrister, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Harris, Haywood, Jackson, Lindsay, Madla, Nelson, Shapiro, Staples, Wentworth, West, Zaffirini.

Nays: Barrientos, Bernsen, Gallegos, Lucio, Shapleigh, Sibley, Truan, Van de Putte, Whitmire.

Present-not voting: Moncrief, Ogden, Mr. President.

#### **Floor Amendment No. 17 was not offered.**

Senator Ogden offered the following amendment to the bill:

#### **Floor Amendment No. 17A**

Amend **HB 2914** by adding the following new Section to read as follows and renumbering subsequent Sections:

Section \_\_\_\_\_. If the comptroller is unable to certify revenue to cover higher than expected utility costs under Section 52 of the Special Provisions Relating Only to State Agencies of Higher Education under Article III of SB 1, and upon approval of the Texas A&M University Board of Regents, Texas A&M University may assess an annual utility fee not to exceed 125 dollars per student to cover utility costs that are in excess of 110 percent of the amount appropriated in Senate Bill 1, General Appropriations Act.

The amendment was read and failed of adoption by the following vote: Yeas 4, Nays 26, Present-not voting 1.

Yeas: Ellis, Moncrief, Ogden, Wentworth.

Nays: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Fraser, Gallegos, Harris, Haywood, Jackson, Lindsay, Lucio, Madla, Nelson, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, West, Whitmire, Zaffirini.

Present-not voting: Mr. President.

**SENATE RULE 6.10(a) SUSPENDED  
(Reconsideration)**

On motion of Senator Whitmire, Senate Rule 6.10(a), which states that a motion to reconsider the vote by which a motion to table prevailed may not be made, was suspended for Floor Amendment No. 15 to **HB 2914** by the following vote: Yeas 21, Nays 7, Present-not voting 1.

Yeas: Barrientos, Bernsen, Brown, Cain, Duncan, Ellis, Gallegos, Jackson, Lindsay, Lucio, Madla, Moncrief, Nelson, Ogden, Shapiro, Shapleigh, Truan, Van de Putte, West, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Carona, Fraser, Haywood, Sibley, Wentworth.

Present-not voting: Mr. President.

Absent: Harris, Staples.

**VOTE RECONSIDERED**

On motion of Senator Whitmire and by unanimous consent, the vote by which Floor Amendment No. 15 to **HB 2914** was tabled was reconsidered by the following vote: Yeas 22, Nays 8, Present-not voting 1.

Yeas: Barrientos, Bernsen, Brown, Cain, Duncan, Ellis, Gallegos, Harris, Lindsay, Lucio, Madla, Moncrief, Nelson, Ogden, Shapleigh, Sibley, Staples, Truan, Van de Putte, West, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Carona, Fraser, Haywood, Jackson, Shapiro, Wentworth.

Present-not voting: Mr. President.

Question—Shall Floor Amendment No. 15 to **HB 2914** be adopted?

Senator Duncan moved to table Floor Amendment No. 15.

The motion to table was lost by the following vote: Yeas 15, Nays 15, Present-not voting 1.

Yeas: Armbrister, Bivins, Brown, Carona, Duncan, Fraser, Harris, Haywood, Jackson, Lindsay, Ogden, Shapiro, Sibley, Staples, Wentworth.

Nays: Barrientos, Bernsen, Cain, Ellis, Gallegos, Lucio, Madla, Moncrief, Nelson, Shapleigh, Truan, Van de Putte, West, Whitmire, Zaffirini.

Present-not voting: Mr. President.

Question recurring on the adoption of Floor Amendment No. 15, the amendment failed of adoption by the following vote: Yeas 15, Nays 15, Present-not voting 1.

Yeas: Barrientos, Bernsen, Cain, Ellis, Gallegos, Lucio, Madla, Moncrief, Nelson, Shapleigh, Truan, Van de Putte, West, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Carona, Duncan, Fraser, Harris, Haywood, Jackson, Lindsay, Ogden, Shapiro, Sibley, Staples, Wentworth.

Present-not voting: Mr. President.

**Floor Amendment No. 18 was not offered.**

(Senator Armbrister in Chair)

Senator Ogden offered the following amendment to the bill:

**Floor Amendment No. 18A**

Amend **HB 2914** by adding the following appropriately numbered section:  
\_\_\_\_\_ . Contingent on the passage of Senate Bill 1421 or similar legislation relating to certain court costs imposed on a person convicted of an offense, and upon receipt by the Comptroller of collected fees, such fees, in an amount not to exceed those collected, are hereby appropriated to Sam Houston State University for the Correctional Management Institute of Texas and Criminal Justice Center. In no event shall the amount expended by this provision exceed the amount of additional revenue generated pursuant to Senate Bill 1421.

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

Senator Ogden offered the following amendment to the bill:

**Floor Amendment No. 19**

Amend **HB 2914** by adding the following new Section to read as follows and renumbering subsequent Sections:

Section \_\_\_\_\_. If the comptroller is unable to certify revenue to cover higher than expected utility costs under Section 52 of the Special Provisions Relating Only to State Agencies of Higher Education under Article III of SB 1, and upon approval of a majority vote of the students, Texas A&M University may assess an annual utility fee not to exceed 125 dollars per student to cover utility costs that are in excess of 110 percent of the amount appropriated in Senate Bill 1, General Appropriations Act.

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

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

**HB 2914** as amended was passed to third reading by the following vote: Yeas 23, Nays 7, Present-not voting 1.

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

Nays: Barrientos, Bernsen, Gallegos, Shapleigh, Truan, Van de Putte, Whitmire.

Present-not voting: Mr. President.

**MOTION TO PLACE  
HOUSE BILL 2914 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 2914** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 23, Nays 7, Present-not voting 1. (Not receiving four-fifths vote of Members present)

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

Nays: Barrientos, Bernsen, Gallegos, Shapleigh, Truan, Van de Putte, Whitmire.

Present-not voting: Mr. President.

### **COMMITTEE SUBSTITUTE HOUSE BILL 3452 ON SECOND READING**

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

**CSHB 3452**, Relating to the abolition and transfer of functions of the Texas Department of Economic Development, the operation, funding, and administration of the smart jobs fund program, and the creation of the Office of Strategic Business Development.

The bill was read second time.

Senator Sibley offered the following amendment to the bill:

#### **Floor Amendment No. 1**

Amend **CSHB 3452** (Senate Committee Printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Section 481.003, Government Code, is amended to read as follows:

Sec. 481.003. Sunset Provision. The Texas Department of Economic Development is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2003 [~~2001~~].

SECTION 2. Section 481.161, Government Code, is amended to read as follows:

Sec. 481.161. Expiration. This subchapter expires December 31, 2003 [~~2001~~].

SECTION 3. Section 204.124, Labor Code, is amended to read as follows:

Sec. 204.124. Expiration. This subchapter expires December 31, 2003 [~~2001~~].

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

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

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

**CSHB 3452** as amended was passed to third reading by a viva voce vote.

### **RECORD OF VOTES**

Senators Lucio and Madla asked to be recorded as voting "Nay" on the passage of **CSHB 3452** to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3452 ON THIRD READING**

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3452** 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, Moncrief, Nelson, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Madla.

Present-not voting: Mr. President.

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

**RECORD OF VOTES**

Senators Lucio and Madla asked to be recorded as voting "Nay" on the final passage of **CSHB 3452**.

**HOUSE BILL 2061 ON SECOND READING**

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

**HB 2061**, Relating to establishing a historical representation advisory committee.

The bill was read second time.

Senator Cain offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2061** by striking all below the enacting clause and substituting the following:

SECTION 1. Chapter 443, Government Code, is amended by adding Section 443.0081 to read as follows:

Sec. 443.0081. HISTORICAL REPRESENTATION ADVISORY COMMITTEE.  
(a) To ensure that the diverse history of Texas is accurately represented in the Capitol Complex, the historical representation advisory committee shall provide guidance to the board on the addition of monuments to the Capitol Complex.

(b) The advisory committee consists of the following 12 members:

(1) four members appointed by the governor;

(2) four members appointed by the lieutenant governor; and

(3) four members appointed by the speaker of the house of representatives.

(c) In making appointments under this section, the governor, the lieutenant governor, and the speaker of the house of representatives shall attempt to include African American Texans, Hispanic American Texans, Native American Texans, female Texans, and Texans exemplifying rural heritage.

(d) The governor shall designate the presiding officer of the committee from among the members of the committee. The presiding officer serves a term of two years.

(e) A member of the advisory committee serves at the pleasure of the appointing officer and serves without compensation or reimbursement of expenses.

(f) The advisory committee shall conduct meetings the committee considers necessary to provide guidance under this section. The board shall provide necessary administrative support to the advisory committee.

(g) Subject to the approval of the board, the advisory committee shall develop its own bylaws under which it shall operate.

(h) Chapter 2110 does not apply to the advisory committee.

(i) The advisory committee is subject to the open meetings law, Chapter 551.

(j) The advisory committee is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the advisory committee is abolished September 1, 2007.

(k) The advisory committee shall:

(1) collect information relating to each proposed monument to the Capitol Complex; and

(2) in cooperation with the chair of the history department at Prairie View A&M University, at The University of Texas at Austin, or at any other land grant university in the state, as determined by the committee, ensure the:

(A) historical accuracy of any proposed monument; and

(B) equitable representation of all Texans, including but not limited to, African slaves, African Americans, Hispanic Americans, Native Americans, women in Texas history, and Texans exemplifying military service and rural heritage in additional monuments to the Capitol Complex.

(l) In this section, "monument" has the meaning assigned by Section 443.015, as added by Chapter 1141, Acts of the 75th Legislature, Regular Session, 1997.

SECTION 2. Not later than January 1, 2002, the governor, the lieutenant governor, and the speaker of the house of representatives shall make appointments to the historical representation advisory committee under Section 443.0081, Government Code, as added by this Act.

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

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

#### RECORD OF VOTE

Senator Wentworth asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 1.

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

**HB 2061** as amended was passed to third reading by a viva voce vote.

#### RECORD OF VOTE

Senator Wentworth asked to be recorded as voting "Nay" on the passage of **HB 2061** to third reading.

**HOUSE BILL 2061 ON THIRD READING**

Senator Cain moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2061** 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, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, West, Whitmire, Zaffirini.

Nays: Wentworth.

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)

**GUEST PRESENTED**

The Senate Doorkeeper was recognized and announced to the Senate the presence of the Honorable Rick Perry, Governor of the State of Texas.

The Senate welcomed Governor Perry.

**VOTE RECONSIDERED ON  
HOUSE BILL 2914**

On motion of Senator Duncan and by unanimous consent, the vote by which **HB 2914** was passed to third reading was reconsidered:

**HB 2914**, Relating to state fiscal matters.

Question—Shall **HB 2914** be passed to third reading?

**AT EASE**

The Presiding Officer, Senator Armbrister in Chair, at 7:30 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

**IN LEGISLATIVE SESSION**

The President at 7:45 p.m. called the Senate to order as In Legislative Session.

Question—Shall **HB 2914** be passed to third reading?

On motion of Senator Duncan and by unanimous consent, further consideration of **HB 2914** was postponed to a time certain of 8:15 p.m. today.

Question—Shall **HB 2914** be passed to third reading?

**HOUSE BILL 609 ON SECOND READING**

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

**HB 609**, Relating to internal auditing of state agencies.

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

**HOUSE BILL 609 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 609** 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 1902 ON SECOND READING**

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

**HB 1902**, Relating to the purposes for which the system benefit fund may be used.

The bill was read second time.

Senator Sibley offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1902** (Senate Committee Printing) by striking all below the enacting clause and substituting the following:

"SECTION 1. Section 39.901, Utilities Code, is amended to read as follows:

Sec. 39.901. SCHOOL FUNDING LOSS MECHANISM. (a) Not later than August 31 [~~March 1~~] each year, the comptroller shall certify to the Texas Education Agency the statewide net loss in electric generating facility property value [~~any property wealth reductions, determined by taking the difference between current year and prior year appraisal values~~] attributable to electric utility restructuring. In calculating the statewide net loss in electric generating facility property value, the comptroller shall:

(1) subtract current year electric generating facility appraisal roll values, as defined by Section 25.24, Tax Code, from 1999 electric generating facility appraised values in each school district;

(2) sum the resulting property value losses (positive differences);

(3) sum the resulting property value gains (negative differences); and

(4) subtract the absolute value of the property value gains, subject to the limitation in Section 39.9011, from the absolute value of the property value losses to calculate a statewide net loss.

(b) The Texas Education Agency shall determine the amount necessary to compensate the state for the statewide net loss certified under subsection (a) by multiplying the statewide net loss by the average adopted property tax rate of the school districts that had losses, weighted by the value losses in each school district, and dividing the result by 100 [~~reduction of the amount of property taxes recaptured by the state from school districts subject to wealth equalization under Chapter 41, Education Code, as a result of the property wealth reductions certified under Subsection (a)~~] and shall notify the commission of the amount necessary to compensate the state for the

reduction. The comptroller shall provide the Texas Education Agency the electric generating facility value losses in each school district used in subsection (a)(2) for use in calculating the weighted average property tax rate.

~~(c) [The Texas Education Agency shall determine the amount necessary to compensate school districts for lost revenue resulting from the property wealth reductions under Subsection (a) and shall notify the commission of this amount. The amounts necessary to compensate districts shall be the sum of:~~

~~(1) decreases in the level of funding to which a school district is entitled under Chapters 42 and 46, Education Code, that are directly attributable to the decline in property values caused by utility restructuring; and~~

~~(2) losses of property tax collections incurred by school districts that are directly attributable to property value declines caused by utility restructuring and that are not accounted for under Subdivision (1), including amounts that a school district would be entitled to retain under Chapter 41, Education Code.]~~

~~[(d)]~~ The amounts determined by the comptroller and the Texas Education Agency under this section, for the purposes of this section, are final and may not be appealed.

~~(d) [(e)]~~ Not later than May 1 of each year, subject to Section 39.903 (b), the commission shall transfer from the system benefit fund to the foundation school fund the amount [amounts] determined by the Texas Education Agency under Subsection (b) to the extent that funds are available. [Subsections (b) and (c). If in any year the system benefit fund is insufficient to make the transfer designated by the Texas Education Agency, the shortfall shall be included in the projected revenue requirement for the system benefit fund the next time the commission sets the fee under Section 39.903, and the shortfall amount shall be transferred to the Foundation School Program the following year.] Amounts transferred from the system benefit fund under this section may be appropriated only for the support of the Foundation School Program and are available, in addition to any amounts allocated by the General Appropriations Act, to finance actions under Section 41.002(b) or 42.2521 [42.252(e)], Education Code.

~~(e) [(f)]~~ The Texas Education Agency shall, on the transfer of funds from the system benefit fund to the foundation school fund, compensate school districts for losses incurred under Subsection (c).]

~~[(g)]~~ The commissioner of education and the comptroller shall adopt rules necessary to implement this section, including rules providing for public input.

~~(f) [(h)]~~ This section is effective through the 2006-2007 school year. This section expires August 31, 2007.

SECTION 2. Chapter 39, Utilities Code, is amended by adding Section 39.9011 to read as follows:

Sec. 39.9011. LIMITATION ON TOTAL PROPERTY VALUE GAINS. (a) If the absolute value of the total property value gains calculated as required by Section 39.901(a)(3) exceed 30 percent of the absolute value of the property value losses calculated as required by Section 39.901(a)(2), the comptroller shall cap the total property value gains at 30 percent of the property value losses before calculating the statewide net loss required by Section 39.901(a)(4).

(b) This section expires May 31, 2003.

SECTION 3. Section 39.903, Utilities Code, is amended to read as follows:

Sec. 39.903. SYSTEM BENEFIT FUND. (a) The system benefit fund is an account in the general revenue fund that may be appropriated only for the purposes

provided by this section. Interest earned on the system benefit fund shall be credited to [created as a trust fund with the comptroller and shall be administered by the commission as trustee on behalf of the recipients of money from] the fund.

(b) The system benefit fund is financed by a nonbypassable fee set by the commission in an amount not to exceed 65 [50] cents per megawatt hour~~[, except beginning on January 1, 2002, and ending on December 31, 2006, the commission may set the fee in an amount not to exceed 65 cents per megawatt hour to the extent necessary to collect sufficient revenue to fund the 10 percent reduced rate requirements of the program required by Subsection (h)].~~ The system benefit fund fee is allocated to customers based on the amount of kilowatt hours used.

(c) The nonbypassable fee may not be imposed on the retail electric customers of a municipally owned utility or electric cooperative before the sixth month preceding the date on which the utility or cooperative implements customer choice. Money distributed from the system benefit fund to a municipally owned utility or an electric cooperative shall be proportional to the nonbypassable fee paid by the municipally owned utility or the electric cooperative, subject to the reimbursement provided by Subsection (i). On request by a municipally owned utility or electric cooperative, the commission shall reduce the nonbypassable fee imposed on retail electric customers served by the municipally owned utility or electric cooperative by an amount equal to the amount provided by the municipally owned utility or electric cooperative or its ratepayers for local low-income programs and local programs that educate customers about the retail electric market in a neutral and nonpromotional manner.

(d) The commission shall annually review and approve system benefit fund accounts, projected revenue requirements, and proposed nonbypassable fees. The commission shall report to the electric utility restructuring legislative oversight committee if the system benefit fund fee is insufficient to fund the purposes set forth in Subsection (e) to the extent required by this section.

(e) The system benefit fund shall provide funding solely for the following regulatory purposes and in the following order of priority:

(1) programs to assist low-income electric customers by providing the 10 percent reduced rate prescribed by Subsections (h) [provided by Subsections (f)-(h)];

(2) customer education programs, administrative expenses incurred by the commission in implementing and administering this chapter, and expenses incurred by the office under this chapter; [and]

(3) programs to assist low-income electric customers by providing the targeted energy efficiency programs described by Subsection (f)(2);

(4) the school funding loss mechanism provided by Section 39.901; and

(5) programs to assist low-income electric customers by providing the 20 percent reduced rate prescribed by Subsection (h).

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all 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 and was adopted by a viva voce vote.

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

**HB 1902** as amended was passed to third reading by a viva voce vote.

### HOUSE BILL 1902 ON THIRD READING

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1902** 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.

### AT EASE

The President at 7:56 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

### IN LEGISLATIVE SESSION

The President at 8:15 p.m. called the Senate to order as In Legislative Session.

### HOUSE BILL 1883 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 1883**, Relating to durable powers of attorney and statutory durable powers of attorney.

The bill was read second time.

Senator West offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 1883** by striking all below the enacting clause and substituting the following:

SECTION 1. Sec. 489B. Texas Probate Code, is amended to read as follows:

Sec. 489B. DUTY TO INFORM AND ACCOUNT. (a) The attorney in fact or agent is a fiduciary and has a duty to inform and to account for actions taken pursuant to the power of attorney.

(b) The attorney in fact or agent shall timely inform the principal of all actions taken pursuant to the power of attorney. Failure of the attorney in fact or agent to inform timely, as to third parties, shall not invalidate any action of the attorney in fact or agent.

(c) The attorney in fact or agent shall maintain records of each action taken or decision made by the attorney in fact or agent.

(d) The principal may demand an accounting by the attorney in fact or agent. Unless otherwise directed by the principal the accounting shall include:

(1) The property belonging to the principal that has come to the attorney in fact's or agent's knowledge or into the attorney in fact's or agent's possession;

(2) All actions taken or decisions made by the attorney in fact or agent;

(3) A complete account of receipts, disbursements, and other actions of the attorney in fact or agent, including their source and nature, with receipts of principal and income shown separately;

(4) A listing of all property over which the attorney in fact or agent has exercised control, with an adequate description of each asset and its current value if known to the attorney in fact or agent;

(5) The cash balance on hand and the name and location of the depository where the balance is kept;

(6) All known liabilities; and

(7) Such other information and facts known to the attorney in fact or agent as may be necessary to a full and definite understanding of the exact condition of the property belonging to the principal.

(e) Unless directed otherwise by the principal, the attorney in fact or agent shall also provide to the principal all documentation regarding the principal's property.

(f) The attorney in fact or agent shall maintain all records until delivered to the principal, released by the principal, or discharged by a court.

(g) If the attorney in fact or agent fails or refuses to inform the principal, provide documentation, or deliver the accounting within 60 days (or such longer or shorter time that the principal demands or a court may order) the principal may file suit to compel the attorney in fact or agent to deliver the accounting, to deliver the assets or to terminate the power of attorney.

(h) This section shall not limit the right of the principal to terminate the power of attorney or to make additional requirements of or to give additional instructions to the attorney in fact or agent.

(i) Where ever in this chapter a principal is given an authority to act that shall include not only the principal but also any person designated by the principal, a guardian of the estate of the principal, or other personal representative of the principal.

(j) The rights set out in this section and chapter is cumulative of any other rights or remedies the principal may have at common law or other applicable statutes and not in derogation of those rights.

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

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 1883** as amended was passed to third reading by a viva voce vote.

### **HOUSE BILL 1883 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 1883** 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 2914 ON SECOND READING**

The President laid before the Senate **HB 2914** on its second reading. The vote on passage to third reading was reconsidered and further consideration was postponed to a time certain of 8:15 p.m. today:

**HB 2914**, Relating to state fiscal matters.

Question—Shall **HB 2914** be passed to third reading?

### VOTE RECONSIDERED

On motion of Senator Bivins and by unanimous consent, the vote by which Floor Amendment No. 16 to **HB 2914** was adopted was reconsidered.

Question—Shall Floor Amendment No. 16 to **HB 2914** be adopted?

On motion of Senator Bivins and by unanimous consent, Floor Amendment No. 16 was withdrawn.

Senator Shapleigh offered the following amendment to the bill:

#### Floor Amendment No. 20

Amend **HB 2914** by inserting the following new section:

On or before September 1, 2002, the Comptroller shall report to the Legislature as to the feasibility, methodology and cost of calculating the effect of each provision on the distribution of the tax burden by ethnicity from the data included in the Tax Exemptions and Tax Incidence Report required under Section 403.014 Government Code.

SHAPLEIGH  
FRASER

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

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

**HB 2914** as again amended was again passed to third reading by a viva voce vote.

### HOUSE BILL 2914 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 2914** be placed on its third reading and final passage.

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

Present-not voting: Mr. President.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

### HOUSE BILL 1761 ON SECOND READING

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

**HB 1761**, Relating to the right of an employee to time off from work to meet with certain persons affecting the education of the employee's child.

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

### RECORD OF VOTES

Senators Carona, Fraser, and Shapiro asked to be recorded as voting "Nay" on the passage of **HB 1761** to third reading.

**MOTION TO PLACE  
HOUSE BILL 1761 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1761** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 16, Nays 9, Present-not voting 1. (Not receiving four-fifths vote of Members present)

Yeas: Armbrister, Barrientos, Bernsen, Ellis, Gallegos, Lucio, Madla, Moncrief, Ogden, Shapleigh, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Carona, Duncan, Fraser, Haywood, Jackson, Lindsay, Nelson, Shapiro, Staples.

Present-not voting: Mr. President.

Absent: Bivins, Brown, Cain, Harris, Sibley.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

May 23, 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 11**, Relating to protecting the privacy of medical records; providing penalties.  
(Committee Substitute/Amended)

**SB 18**, Relating to the creation of the offense of interfering with an emergency telephone call.

**SB 40**, Relating to tuition assistance for licensed vocational nursing students who agree following their licensure to practice in long-term care facilities.

**SB 144**, Relating to the qualifications for a license or provisional license to practice chiropractic.  
(Amended)

**SB 159**, Relating to establishing a competitive grant program for projects that are designed to improve the quality of life for residents of a convalescent or nursing home and that could serve as a model of best practices for the convalescent and nursing home industry.

**SB 194**, Relating to the creation, jurisdiction, and administration of the Probate Court No. 1 of Collin County and to the administration of the county courts at law of Collin County.

**SB 220**, Relating to the regulation and enforcement of weight limitations and safety standards for certain motor vehicles and the enforcement of certain other traffic laws; providing penalties.

(Committee Substitute/Amended)

**SB 248**, Relating to the exemption from ad valorem taxation of motor vehicles leased for personal use.

(Amended)

**SB 257**, Relating to the purchase of a lottery ticket by a person younger than the age of 18; imposing criminal penalties.

**SB 273**, Relating to systems and programs administered by the Teacher Retirement System of Texas; providing a penalty.

(Committee Substitute/Amended)

**SB 279**, Relating to sanctions imposed against certain facilities regulated by the Texas Department of Health.

(Amended)

**SB 292**, Relating to programs and systems administered by the Employees Retirement System of Texas.

(Committee Substitute/Amended)

**SB 311**, Relating to the abolition of the General Services Commission; to the transfer of its functions to a newly created Texas Procurement Commission, the Department of Information Resources, and a newly created Texas Building Commission; and to the operations of certain other state agencies having functions transferred from or associated with the commission, including the telecommunications planning and oversight council, the attorney general, and the State Cemetery Committee.

(Committee Substitute/Amended)

**SB 322**, Relating to the continuation and functions of the Texas Department of Housing and Community Affairs and to other matters relating to housing or community development, including the creation of the Manufactured Housing Board and the Office of Rural Community Affairs; providing a penalty.

(Committee Substitute/Amended)

**SB 338**, Relating to a state plan for the prevention and treatment of hepatitis C.

(Amended)

**SB 390**, Relating to an exemption from the requirements of the open meetings law for certain negotiations involving the Texas Lottery Commission.

**SB 409**, Relating to the powers and duties of the Texas Turnpike Authority division of the Texas Department of Transportation, including the power of eminent domain, and to the abolishment of the board of directors of that division.

(Committee Substitute/Amended)

**SB 454**, Relating to the collection and enforcement of tolls on certain toll roads and toll projects; providing for civil and criminal penalties.

**SB 465**, Relating to the establishment of a task force to study the viability of creating border port of entry authorities.

(Amended)

**SB 482**, Relating to accounting procedures for structural components of certain state buildings.

**SB 497**, Relating to information a state agency may post on the Internet.

**SB 512**, Relating to the investment and management of the permanent school fund.  
(Committee Substitute/Amended)

**SB 531**, Relating to requiring the Texas Department of Health in consultation with the General Services Commission to study the cost and feasibility of installing automated external defibrillators in state buildings.

**SB 557**, Relating to overtime compensation for certain municipal police department officers and civilian employees.

**SB 593**, Relating to credit in and benefits and administration of retirement systems for police officers in certain municipalities.

**SB 625**, Relating to the electronic storage of records by the court of criminal appeals.

**SB 671**, Relating to the surrender of a suspended, canceled, revoked, or disqualified driver's license; providing a penalty.

**SB 687**, Relating to criminal penalties for the intentional or knowing discharge of waste or pollutants.  
(Committee Substitute)

**SB 691**, Relating to the creation of an assisted living facility trust fund.

**SB 734**, Relating to a report by the Legislative Budget Board on the performance of the state's major investment funds.  
(Committee Substitute)

**SB 751**, Relating to providing the services of promotoras for outreach and education programs for recipients of medical assistance.

**SB 769**, Relating to the requirement that certain information be provided in a suit affecting the parent-child relationship.

**SB 799**, Relating to requiring state agencies to perform exit interviews with employees.

**SB 869**, Relating to incapacitated persons, wards, and proposed wards.

**SB 903**, Relating to the establishment and use of a women's athletic development fund and a study of women's athletic development practices at institutions of higher education.

**SB 932**, Relating to the prosecution of the offense of indecency with a child.

**SB 1001**, Relating to the authority of a judge of a district court to hear certain matters at a correctional facility.

**SB 1024**, Relating to investigations under and enforcement of the law regulating the practice of podiatry.

**SB 1051**, Relating to the training and regulation of promotoras and community health workers.  
(Amended)

**SB 1053**, Relating to rates and expenditures under the Medicaid and state child health plan programs in the Texas-Mexico border region.

**SB 1100**, Relating to the establishment and operation of pilot centers for the advancement of quality in long-term care.  
(Amended)

**SB 1173**, Relating to authorizing the issuance of not more than \$9 million in revenue bonds for the benefit of the Fleet Admiral Chester W. Nimitz Memorial Naval Museum.  
(Amended)

**SB 1174**, Relating to the punishment for the offense of criminal mischief involving a public water supply.

**SB 1176**, Relating to certain nondisciplinary actions against certain police officers and to the records of overturned disciplinary actions or charges of misconduct against certain firefighters and police officers.

**SB 1180**, Relating to the filing deadline for candidacy for the governing body of certain school districts.

**SB 1181**, Relating to requiring health insurers and related entities to disclose certain information.  
(Committee Substitute)

**SB 1212**, Relating to the examination requirement for licensing as a chemical dependency counselor.  
(Committee Substitute)

**SB 1235**, Relating to waiving the requirement of a bond for certain alcoholic beverage permit holders and licensees.

**SB 1245**, Relating to reporting certain acts of misconduct by and background checks of certain employees and applicants for employment of certain health care agencies and facilities.  
(Committee Substitute)

**SB 1294**, Relating to the establishment of a pilot program by the Texas Workforce Commission to assist teachers in retaining employment in the field of child care.

**SB 1302**, Relating to municipal elections for the conveyance of certain park land.

**SB 1315**, Relating to the use of revenue from the municipal hotel occupancy tax.  
(Amended)

**SB 1345**, Relating to the interception of wire, oral, or electronic communications, to the use of pen registers and trap and trace devices, and to the civil and criminal consequences of improperly engaging in those activities.

**SB 1377**, Relating to the authority of the state auditor to review the use of money collected as court costs.  
(Amended)

**SB 1390**, Relating to the penalties for operating certain facilities without obtaining a permit under the Texas Clean Air Act.

**SB 1434**, Relating to the appointment and duties of magistrates for certain courts of Brazos County.

(Amended)

**SB 1458**, Relating to the management of state agency and local government electronic projects, equipment, and contracts, to the purchase and use of certain advanced technological equipment, and to the use of outside personnel by the comptroller of public accounts.

(Amended)

**SB 1646**, Relating to conferring on the Coastal Water Authority the power to abandon or deconstruct a canal, ditch, or lateral; changing the qualifications of the authority's board of directors; and authorizing the authority to issue refunding bonds.

(Amended)

**SB 1727**, Relating to staff development provided by school districts.

**SB 1764**, Relating to the ratification of the creation of the McMullen Groundwater Conservation District and to the administration, powers, duties, operation, and financing of the district.

(Amended)

**SB 1773**, Relating to the creation of the Port Bolivar Improvement District; providing authority to impose a tax and issue bonds.

(Committee Substitute/Amended)

**SB 1775**, Relating to the creation, administration, powers, duties, operation, and financing of the Harris County Municipal Utility District No. 386.

(Amended)

**SB 1776**, Relating to the creation, administration, powers, duties, operation, and financing of the Harris County Municipal Utility District No. 387.

(Amended)

**SB 1777**, Relating to the creation, administration, powers, duties, operation, and financing of the Harris County Municipal Utility District No. 388.

(Amended)

**SB 1818**, Relating to the authority of the board of regents of The Texas A&M University System regarding real property, permanent improvements, and eminent domain.

**SB 1821**, Relating to the creation, administration, powers, duties, operations, and financing of the Neches and Trinity Valleys Groundwater Conservation District.

(Amended)

**SCR 1**, Granting R. C. Crawford and Crawford Heavy and Marine Construction Limited permission to sue the state and the Texas Department of Transportation.

**SCR 35**, Memorializing Congress to require federally-controlled emission sources to meet the same reduction schedule as state-controlled sources.

Respectfully,

/s/Sharon Carter, Chief Clerk  
House of Representatives

**HOUSE BILL 1838 ON SECOND READING**

Senator Nelson moved to suspend the Intent Calendar Rule, the regular order of business, and all necessary rules to take up for consideration at this time:

**HB 1838**, Relating to the distance between certain pits that are part of quarrying operations and adjacent property.

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

Present-not voting: Mr. President.

The bill was read second time.

Senator Nelson offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1838** in SECTION 1 of the bill, in added Section 133.901, Natural Resources Code, between the period and "At" (Senate committee printing, page 1, line 14), by inserting the following:

(a) This section applies only to a county with a population of more than 400,000 and less than 475,000.

(b)

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

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

**HB 1838** as amended was passed to third reading by a viva voce vote.

**HOUSE BILL 1838 ON THIRD READING**

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1838** 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.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1641**

Senator Barrientos submitted the following Conference Committee Report:

Austin, Texas  
May 22, 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 **HB 1641** have had the same

under consideration, and beg to report it back with the recommendation that it do pass.

BARRIENTOS

RANGEL

BIVINS

F. BROWN

BROWN

FARABEE

TRUAN

J. JONES

ZAFFIRINI

MORRISON

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

### CONFERENCE COMMITTEE REPORT ON SENATE BILL 113

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas

May 22, 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 113** 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

GOOLSBY

BERNSEN

HAMRIC

DUNCAN

HAWLEY

OGDEN

HILL

VAN DE PUTTE

Y. DAVIS

On the part of the Senate

On the part of the House

### A BILL TO BE ENTITLED AN ACT

relating to vehicle passenger safety systems; providing criminal penalties.

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

SECTION 1. Subsections (a) and (f), Section 545.412, Transportation Code, are amended to read as follows:

(a) A person commits an offense if the person operates a passenger vehicle, ~~car or light truck and:~~

~~[(+) transports a child who is younger than four [two] years of age or less than 36 inches in height, and does not keep the child secured during the operation of the vehicle in a child passenger safety seat system according to the instructions of the manufacturer of the safety seat system[; or~~

~~[(2) transports a child who is at least two years of age but younger than four years of age and does not keep the child secured during the operation of the vehicle;~~

~~[(A) in a child passenger safety seat system according to the instructions of the manufacturer of the safety seat system; or~~

~~[(B) by a safety belt].~~

(f) In this section:

(1) "Child~~[-,"child]~~ passenger safety seat system" means an infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.

(2) "Passenger vehicle" means a passenger car, light truck, sport utility vehicle, truck, or truck tractor.

(3) "Safety belt" means a lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(4) "Secured," in connection with use of a safety belt, means using the lap belt and any shoulder straps according to the instructions of:

(A) the manufacturer of the vehicle, if the safety belt is original equipment; or

(B) the manufacturer of the safety belt, if the safety belt has been added to the vehicle.

SECTION 2. Subsections (a), (b), (c), (e), and (h), Section 545.413, Transportation Code, are amended to read as follows:

(a) A person commits an offense if the person:

(1) is at least 15 years of age;

(2) is riding in the front seat of a passenger vehicle [~~car~~] while the vehicle is being operated;

(3) is occupying a seat that is equipped with a safety belt; and

(4) is not secured by a safety belt.

(b) A person commits an offense if the person:

(1) operates a passenger vehicle [~~car or light truck~~] that is equipped with safety belts; and

(2) allows a child who is at least four years of age but younger than 17 [~~15~~] years of age to ride in the vehicle without requiring the child to be secured by a safety belt, provided the child is occupying a seat that is equipped with a safety belt.

(c) A passenger vehicle [~~car~~] or a seat in a passenger vehicle [~~car~~] is considered to be equipped with a safety belt if the vehicle is required under Section 547.601 to be equipped with safety belts.

(e) It is a defense to prosecution under this section that:

(1) the person possesses a written statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;

(2) the person presents to the court, not later than the 10th day after the date of the offense, a statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;

(3) the person is employed by the United States Postal Service and performing a duty for that agency that requires the operator to service postal boxes from a vehicle or that requires frequent entry into and exit from a vehicle;

(4) the person is engaged in the actual delivery of newspapers from a vehicle or is performing newspaper delivery duties that require frequent entry into and exit from a vehicle; ~~[or]~~

(5) the person is employed by a public or private utility company and is engaged in the reading of meters or performing a similar duty for that company requiring the operator to frequently enter into and exit from a vehicle; or

(6) The person is operating a commercial vehicle registered as a farm vehicle under the provisions of Section 502.163 that does not have a gross weight, registered weight, or gross weight rating of 48,000 pounds or more.

(h) In this section, "passenger vehicle," "safety belt," and "secured" have the meanings assigned by Section 545.412[:

[(1) "Passenger car" includes a truck with a manufacturer's rated carrying capacity of not more than 1,500 pounds.

[(2) "Safety belt" means a lap belt and any shoulder straps included as original equipment on or added to a vehicle].

SECTION 3. Subchapter K, Chapter 547, Transportation Code, is amended by adding Section 547.614 to read as follows:

Sec. 547.614. RESTRICTIONS ON AIRBAGS. (a) A person commits an offense if the person knowingly:

(1) installs or purports to install an airbag in a vehicle; and

(2) does not install an airbag that meets all applicable federal safety regulations for an airbag installed in a vehicle of that make, model, and year.

(b) An offense under this section is a Class A misdemeanor.

SECTION 4. (a) The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. For the purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 5. 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 303**

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas  
May 22, 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 303** 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.

LUCIO  
BERNSEN  
HARRIS

WENTWORTH  
WEST

On the part of the Senate

GALLEGO  
MCCALL  
SOLIS

THOMPSON  
URESTI

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the functions of the State Commission on Judicial Conduct.

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

SECTION 1. Section 33.001, Government Code, is amended by amending Subsections (b) and (c) and adding Subsection (d) to read as follows:

(b) For purposes of Section 1-a, Article V, Texas Constitution, "wilful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties" includes:

(1) wilful, persistent, and unjustifiable failure to timely execute the business of the court, considering the quantity and complexity of the business;

(2) wilful violation of a provision of the Texas penal statutes or the Code of Judicial Conduct;

(3) persistent or wilful violation of the rules promulgated by the supreme court; [or]

(4) incompetence in the performance of the duties of the office;

(5) failure to cooperate with the commission; or

(6) violation of any provision of a voluntary agreement to resign from judicial office in lieu of disciplinary action by the commission.

(c) The definitions [definition] provided by Subsections [Subsection] (b) and (d) are [its] not exclusive.

(d) For purposes of Subdivision (6), Section 1-a, Article V, Texas Constitution, a misdemeanor involving official misconduct includes a misdemeanor involving an act relating to a judicial office or a misdemeanor involving an act involving moral turpitude.

SECTION 2. Section 33.002, Government Code, is amended by adding Subsection (c) to read as follows:

(c) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

SECTION 3. Subchapter A, Chapter 33, Government Code, is amended by adding Section 33.0032 to read as follows:

Sec. 33.0032. 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 commission 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 an officer, employee, or paid consultant of a Texas trade association the members of which are subject to regulation by the commission; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association the members of which are subject to regulation by the commission.

(c) A person may not act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

SECTION 4. Subsection (c), Section 33.004, Government Code, is amended to read as follows:

(c) A special master who is a retired judge of a district court or the court of criminal appeals or a retired justice of a court of appeals or the supreme court is entitled to compensation in the same manner as provided by Section 74.061. For purposes of this subsection, the term "court" in Section 74.061(c) means the district court in the county in which formal proceedings are heard by the [a per diem of \$25 for each day or part of a day that the person spends in the performance of the duties of] special master. [In addition, the special master is entitled to an amount equal to the difference between the retirement benefits that the person receives as a retired judge or justice and the compensation that the state pays an active judge or justice of the court from which the person retired. The per diem and compensation under this subsection is in addition to the retirement benefits to which the person is entitled.]

SECTION 5. Subchapter A, Chapter 33, Government Code, is amended by adding Sections 33.0041 through 33.0046 to read as follows:

Sec. 33.0041. REMOVAL OF COMMISSION MEMBER; NOTIFICATION PROCEDURES. If the executive director has knowledge that a potential ground for removal of a commission member exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor, the supreme court, the state bar, and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall then notify the governor, the supreme court, the state bar, and the attorney general that a potential ground for removal exists.

Sec. 33.0042. REQUIREMENTS FOR OFFICE OR EMPLOYMENT; INFORMATION. The executive director or the executive director's designee 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 and Section 1-a, Article V, Texas Constitution, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 33.0043. COMMISSION MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission shall complete 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 commission;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

(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 commission;
- (6) the results of the most recent formal audit of the commission;
- (7) the requirements of laws relating to public officials, including conflict-of-interest laws; and
- (8) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Sec. 33.0044. DIVISION OF RESPONSIBILITY. The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and staff of the commission.

Sec. 33.0045. EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

- (1) personnel policies, including policies relating to recruitment, evaluation, selection, 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)(1); and
- (3) be filed with the governor's office.

Sec. 33.0046. STATE EMPLOYEE INCENTIVE PROGRAM: INFORMATION AND TRAINING. The executive director or the executive director's designee shall provide to agency employees information and training on the benefits and methods of participation in the state employee incentive program.

SECTION 6. Subsection (e), Section 33.005, Government Code, is amended to read as follows:

(e) The Texas Bar Journal shall periodically publish public statements, sanctions, and orders of additional education issued by [a report received from] the commission [under Subsection (c)].

SECTION 7. Subsection (a), Section 33.006, Government Code, is amended to read as follows:

- (a) This section applies to:
  - (1) the commission;
  - (2) a member of the commission;
  - (3) the executive director of the commission;
  - (4) an employee of the commission;
  - (5) a special master appointed under Section 1-a(8), Article V, Texas Constitution; [and]

(6) special counsel for the commission and any person employed by the special counsel; and

(7) any other person appointed by the commission to assist the commission in performing its duties.

SECTION 8. Subchapter A, Chapter 33, Government Code, is amended by adding Sections 33.007 and 33.008 to read as follows:

Sec. 33.007. DISTRIBUTION OF MATERIALS TO JUDGES AND THE PUBLIC. (a) The commission shall develop and distribute plain-language materials as described by this section to judges and the public.

(b) The materials must include a description of:

(1) the commission's responsibilities;

(2) the types of conduct that constitute judicial misconduct;

(3) the types of sanctions issued by the commission, including orders of additional education; and

(4) the commission's policies and procedures relating to complaint investigation and resolution.

(c) The materials shall be provided in English and Spanish.

(d) The commission shall provide to each person filing a complaint with the commission the materials described by this section.

(e) The commission shall adopt a policy to effectively distribute materials as required by this section.

Sec. 33.008. JUDICIAL MISCONDUCT INFORMATION. The commission shall routinely provide to entities that provide education to judges information relating to judicial misconduct resulting in sanctions or orders of additional education issued by the commission. The commission shall categorize the information by level of judge and type of misconduct.

SECTION 9. Chapter 33, Government Code, is amended by amending the heading of Subchapter B to read as follows:

#### SUBCHAPTER B. POWERS AND DUTIES

SECTION 10. Section 33.021, Government Code, is amended to read as follows:

Sec. 33.021. GENERAL POWERS OF COMMISSION. The commission may:

(1) design and use a seal;

(2) employ persons that it considers necessary to carry out the duties and powers of the commission;

(3) employ special counsel as it considers necessary;

(4) arrange for attendance of witnesses[~~,- including those not subject to subpoena~~];

(5) arrange for and compensate expert witnesses and reporters; and

(6) pay from its available funds the reasonably necessary expenses of carrying out its duties under the constitution, including providing compensation to special masters.

SECTION 11. Subchapter B, Chapter 33, Government Code, is amended by adding Section 33.0211 to read as follows:

Sec. 33.0211. COMPLAINTS. (a) The commission shall maintain a file on 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, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

SECTION 12. Section 33.022, Government Code, is amended by amending Subsections (c) and (i) and adding Subsection (l) to read as follows:

(c) If, after conducting a preliminary investigation under this section, the commission does not determine that an allegation or appearance of misconduct or disability is unfounded or frivolous, the commission:

(1) shall:

(A) conduct a full investigation of the circumstances surrounding the allegation or appearance of misconduct or disability; and

(B) notify the judge in writing of:

(i) the commencement of the investigation; and

(ii) the nature of the allegation or appearance of misconduct or disability being investigated; and

(2) may:

(A) order [request] the judge to:

(i) submit a written response to the allegation or appearance of misconduct or disability; or

(ii) appear informally before the commission; ~~or~~

(B) order the deposition of any person; or

(C) request the complainant to appear informally before the commission [other than the judge].

(i) The notice shall be served on the judge or the judge's attorney of record by personal service of a copy of the notice by a ~~[member of the commission or by some]~~ person designated by the chairperson. The person serving the notice shall promptly notify the clerk in writing of the date on which the notice was served. If it appears to the chairperson on affidavit that, after reasonable effort during a period of 10 days, personal service could not be had, service may be made by mailing by registered or certified mail copies of the notice addressed to the judge at the judge's chambers or at the judge's last known residence in an envelope marked "personal and confidential." The date of mailing shall be entered in the docket.

(l) The commission shall adopt procedures for hearing from judges and complainants appearing before the commission. The procedures shall ensure the confidentiality of a complainant's identity as provided under Section 33.0321.

SECTION 13. Subsections (a) and (b), Section 33.023, Government Code, are amended to read as follows:

(a) In any investigation or proceeding that involves the ~~[involuntary retirement of a judge because of]~~ physical or mental incapacity of a judge [to discharge the judge's duty], the commission may order the judge to submit to a physical or mental examination by one or more qualified physicians or a mental examination by one or more qualified psychologists selected and paid for by the commission.

(b) The commission shall give the judge written notice of the examination not later than 10 days before the date of the examination. The notice must include the

physician's name and the date, time, and place of the examination. ~~[The examination must be in a city or town in which the judge permanently or temporarily resides, or at a location in the state to which the judge consents.]~~

SECTION 14. Section 33.032, Government Code, is amended by amending Subsections (a), (b), and (c), and adding Subsections (f), (g), and (h) to read as follows:

(a) Except as otherwise provided by this section and Section 33.034 ~~[and Subsections (c), (d), and (e)]~~, the papers filed with and proceedings before the commission are confidential prior to the filing of formal charges ~~[convening of a formal hearing]~~.

(b) The formal hearing and any evidence introduced during the formal hearing, including papers, records, documents, and pleadings filed with the clerk, shall be public ~~[on the convening of the formal hearing]~~.

(c) On issuance of ~~[If the commission issues]~~ a public admonition, warning, reprimand, or public requirement that a person obtain additional training or education by the commission, the record of the informal appearance and the [all papers,] documents presented to ~~[-evidence, and records considered by]~~ the commission during the informal appearance that are not protected by attorney-client or work product privilege ~~[-or forwarded to the commission by its staff, in the proceedings]~~ shall be public.

(f) The commission may release to the Office of the Chief Disciplinary Counsel of the State Bar of Texas information indicating that an attorney, including a judge who is acting in the judge's capacity as an attorney, has violated the Texas Disciplinary Rules of Professional Conduct.

(g) If the commission issues an order suspending a judge who has been indicted for a criminal offense, the order, any withdrawal of the order, and all records and proceedings related to the suspension shall be public.

(h) A voluntary agreement to resign from judicial office in lieu of disciplinary action by the commission shall be public on the commission's acceptance of the agreement. The agreement and any agreed statement of facts relating to the agreement are admissible in a subsequent proceeding before the commission. An agreed statement of facts may be released to the public only if the judge violates a term of the agreement.

SECTION 15. Subchapter B, Chapter 33, Government Code, is amended by adding Section 33.0321 to read as follows:

Sec. 33.0321. CONFIDENTIALITY OF COMPLAINANT'S IDENTITY. On the request of a complainant, the commission may keep the complainant's identity confidential.

SECTION 16. Section 33.033, Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (e) to read as follows:

(a) The commission shall promptly notify a complainant of the disposition of the case ~~[complaint]~~.

(b) The communication shall inform the complainant that:

- (1) the case ~~[complaint]~~ has been dismissed;
- (2) a private sanction or order of additional education has been issued by the commission ~~[appropriate action has been taken, the nature of which will not be disclosed unless disclosure is authorized under Section 33.032];~~
- (3) a public sanction has been issued by the commission; ~~[or]~~
- (4) formal proceedings have been instituted; or

(5) a judge has resigned from judicial office in lieu of disciplinary action by the commission.

(e) If the complaint is dismissed by the commission, the commission shall include in the notification under Subsection (a):

(1) an explanation of each reason for the dismissal; and

(2) information relating to requesting reconsideration of the dismissed complaint as provided by Sections 33.035(a) and (f).

SECTION 17. Subsection (h), Section 33.034, Government Code, is amended to read as follows:

(h) Within 30 days after the date on which the charging document is filed with the clerk, the court shall conduct a hearing on the charging document. The court may, if good cause is shown, grant one or more continuances not to exceed a total of ~~60~~ [30] days. Within 60 days after the hearing, the court~~[-; in its discretion;]~~ shall issue a decision as to the proper disposition of the appeal.

SECTION 18. Subchapter B, Chapter 33, Government Code, is amended by adding Sections 33.035, 33.036, 33.037, and 33.038 to read as follows:

Sec. 33.035. RECONSIDERATION OF COMPLAINT. (a) A complainant may request reconsideration of a dismissed complaint if, not later than the 30th day after the date of the communication informing the complainant of the dismissal, the complainant provides additional evidence of misconduct committed by the judge.

(b) The commission shall deny a request for reconsideration if the complainant does not meet the requirements under Subsection (a). The commission shall notify the complainant of the denial in writing.

(c) The commission shall grant a request for reconsideration if the complainant meets the requirements under Subsection (a). After granting a request, the commission shall vote to:

(1) affirm the original decision to dismiss the complaint; or

(2) reopen the complaint.

(d) The commission shall notify the complainant of the results of the commission's vote under Subsection (c) in writing.

(e) The commission shall conduct an appropriate investigation of a complaint reopened under Subsection (c)(2). The investigation shall be conducted by commission staff who were not involved in the original investigation.

(f) A complainant may request reconsideration of a dismissed complaint under this section only once.

Sec. 33.036. CERTAIN DISCLOSURE OF INFORMATION. (a) To protect the public interest, the commission may disclose information relating to an investigation or proceeding under this chapter to:

(1) a law enforcement agency;

(2) a public official who is authorized or required by law to appoint a person to serve as a judge;

(3) the supreme court; or

(4) an entity that provides commission-ordered education to judges.

(b) Information may be disclosed under this section only to the extent necessary for the recipient of the information to perform an additional duty or function.

Sec. 33.037. SUSPENSION PENDING APPEAL. If a judge who is convicted of a felony or a misdemeanor involving official misconduct appeals the conviction, the commission shall suspend the judge from office without pay pending final disposition of the appeal.

Sec. 33.038. AUTOMATIC REMOVAL. A judge is automatically removed from the judge's office if the judge is convicted of or is granted deferred adjudication for:

(1) a felony; or

(2) a misdemeanor involving official misconduct.

SECTION 19. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.137 to read as follows:

Sec. 411.137. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: STATE COMMISSION ON JUDICIAL CONDUCT. (a) The State Commission on Judicial Conduct is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(1) a judge who is the subject of an investigation or proceeding under Chapter 33; or

(2) the complainant or a witness in an investigation or a proceeding under Chapter 33.

(b) Information received by the State Commission on Judicial Conduct is confidential and may be disseminated only in an investigation or proceeding conducted by the commission.

(c) The State Commission on Judicial Conduct shall destroy criminal history record information obtained under this section promptly after a final determination is made in the matter for which the information was obtained.

SECTION 20. (a) Not later than January 1, 2002, the State Commission on Judicial Conduct shall:

(1) develop plain-language materials and adopt a policy to effectively distribute the materials as required by Section 33.007, Government Code, as added by this Act; and

(2) adopt procedures as required by Subsection (1), Section 33.022, Government Code, as added by this Act.

(b) Section 33.032, Government Code, as amended by this Act, applies to papers filed with and proceedings before the State Commission on Judicial Conduct, regardless of whether the papers were filed or the proceedings were commenced before, on, or after the effective date of this Act.

(c) Section 33.036, Government Code, as added by this Act, applies to information relating to an investigation or proceeding commenced before, on, or after the effective date of this Act.

(d) Section 33.0043, Government Code, as added by this Act, applies only to a member of the State Commission on Judicial Conduct appointed on or after the effective date of this Act.

SECTION 21. (a) Sections 33.001, 33.0211, and 33.033, Government Code, as amended by this Act, apply only to a complaint filed with the State Commission on Judicial Conduct on or after the effective date of this Act, regardless of whether the conduct or act that is the subject of the complaint occurred or was committed before, on, or after the effective date of this Act.

(b) Section 33.004, Government Code, as amended by this Act, applies only to the compensation of a special master appointed on or after the effective date of this Act. The compensation of a special master appointed before the effective date of this Act is governed by the law in effect at the time the appointment was made, and the former law is continued in effect for that purpose.

(c) Section 33.006, Government Code, as amended by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect at the time the cause of action accrued, and that law is continued in effect for that purpose.

(d) Sections 33.037 and 33.038, Government Code, as added by this Act, apply only to a judgment of conviction or a grant of deferred adjudication for an offense committed on or after the effective date of this Act. A judgment of conviction or a grant of deferred adjudication for an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 22. This Act takes effect September 1, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 236**

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas  
May 23, 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 **HB 236** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ELLIS  
DUNCAN  
WHITMIRE  
MONCRIEF  
BIVINS

HINOJOSA  
DUNNAM  
KEEL  
MARTINEZ FISCHER  
KITCHEN

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1166**

Senator Carona submitted the following Conference Committee Report:

Austin, Texas  
May 22, 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 **HB 1166** have had the same

under consideration, and beg to report it back with the recommendation that it do pass.

CARONA  
VAN DE PUTTE  
LUCIO  
JACKSON  
FRASER

DENNY  
AVERITT  
HOPSON  
MENENDEZ  
SOLOMONS

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

### **RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

#### **Memorial Resolutions**

**SR 1147** by Sibley, In memory of the life of Lewis Kirk of Jack County.

**SR 1154** by Fraser, In memory of Alfred Charles Johnson of Waco.

**SR 1166** by Barrientos, In memory of Colonel William R. "Randy" Furr.

**SR 1167** by Barrientos, In memory of Loretta June McClure of Bastrop.

**SR 1178** by Staples, In memory of Judge Raymond "Shorty" Fuller of Colorado City.

**SR 1179** by Fraser, In memory of James H. Russell of Belton and Temple.

**HCR 273** (Staples), In memory of Pauline DeBerry of Lufkin.

#### **Congratulatory Resolutions**

**SR 1146** by Sibley, Congratulating Ada M. Neal of Waco.

**SR 1148** by Lindsay, Congratulating Andrew Brandon Stiles of Houston.

**SR 1149** by Lindsay, Congratulating Nathan J. B. Finch.

**SR 1150** by Lindsay, Congratulating Teresa Scarr of Houston.

**SR 1151** by Lindsay, Congratulating Rebecca Boyle of Houston.

**SR 1152** by Lindsay, Congratulating Sarah Duckers and Mark Davidson on the birth of their son, Thomas Donaghue Davidson.

**SR 1153** by Madla, Commending the girls golf team of Fort Stockton High School in Fort Stockton.

**SR 1155** by Barrientos, Congratulating Coralia Cuellar Schotz of Austin.

**SR 1156** by Wentworth, Congratulating Bobbie and Bryan Maddox of Austin on the birth of their son, Anthony Robert Maddox.

**SR 1157** by Lucio, Congratulating Bobby Pulido.

**SR 1158** by Lucio, Commending the Bobby Pulido Celebrity Golf Classic.

**SR 1159** by Lucio, Commending the Texas Department of Transportation Motor Vehicle Division.

**SR 1160** by Lucio and Brown, Congratulating Edward T. Laine.

**SR 1161** by Lucio and Brown, Congratulating D. C. Jim Dozier.

**SR 1162** by Lucio, Congratulating Vanessa Mendez.

**SR 1164** by Moncrief, Commending the National Management Association.

**SR 1165** by Ogden, Congratulating Bobby Kees Marks.

**SR 1168** by Barrientos, Congratulating Paul E. Northcutt.

**SR 1170** by Madla, Commending *La Prensa* of San Antonio.

**SR 1173** by Cain, Congratulating Raymond Greer of Mabank.

**SR 1175** by Shapiro, Commending the members of Girl Scout Troop 1045 of Highland Park.

**SR 1176** by Bivins, Congratulating Elizabeth Solis.

**SR 1177** by Staples, Congratulating Leon Spencer.

**HCR 99** (Ellis), In honor of Carl Lewis's outstanding work with the Best Buddies International organization.

**HCR 144** (Brown), Honoring State Representative Kyle Janek and his wife, Shannon Janek, on the birth of their son, William Walker Janek.

**HCR 300** (President Ratliff), Congratulating James O. Hesson of Roxton on his retirement.

**HCR 301** (President Ratliff), Honoring Damione Lewis on being the first round draft choice of the St. Louis Rams.

### **Designation Resolution**

**SR 1163** by Moncrief, Recognizing May 25, 2001, as Pat Cole Appreciation Day in Texas.

### **ADJOURNMENT**

On motion of Senator Truan, the Senate at 8:50 p.m. adjourned, in memory of Joseph Dennis of Harris County and Humberto Vasquez of Houston, until 10:00 a.m. tomorrow.

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### **APPENDIX**

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### **SENT TO GOVERNOR**

May 23, 2001

**SCR 69**

### **SIGNED BY GOVERNOR**

May 23, 2001

**SCR 55**