

EIGHTIETH DAY

THURSDAY, MAY 24, 2001

PROCEEDINGS

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

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

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

The Reverend Rick Thompson, Colonial Baptist Church, Wichita Falls, offered the invocation as follows:

Almighty and eternal God, we come before You recognizing that You are a god of history. We recognize Your involvement in the lives of so many great men and women in our state who now fill the corridors of time.

We know of Your love for creation and Your desire to share Your love with all You brought into being. It is You, O God, who has provided strength and hope for all of those who have gone before us and planted their faith in Your eternal purpose.

We come to You now seeking hope for our future. Grant us wisdom, clarity, and courage. Help us to internalize that truth that he who stands for nothing falls for anything.

Help us to live in a manner that is mindful of the hurting and oppressed. Help us to be liberators as You have liberated us. Help us to be even-handed as You are a god of justice, and help us to be creative as You are the creator.

Stir within us the power of Your presence that we might grow in our ability to live and love and serve as You have demonstrated to us how to abundantly live and to freely love and to generously serve. Amen.

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

MESSAGE FROM THE HOUSE**HOUSE CHAMBER**

Austin, Texas

May 24, 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 139, Memorializing congress to provide tax credits to individuals for the purchase of private health insurance.

HCR 246, Directing the State Board of Education to consider including personal finance knowledge among the essential knowledge and skills in the required public school curriculum.

HCR 247, Memorializing congress to repeal the Government Pension Offset.

SB 8, Relating to discrimination in health care rates and reimbursement; providing administrative and civil penalties.
(Amended)

SB 19, Relating to the improvement of children's health through daily physical activity in public schools and a coordinated approach by public schools to prevent obesity and certain diseases.
(Amended)

SB 51, Relating to the provision of Medicaid to certain persons making the transition from foster care to independent living.
(Amended)

SB 63, Relating to a franchise tax credit for wages paid to persons with certain disabilities.
(Amended)

SB 139, Relating to the prosecution of and punishment for the offense of harassment.
(Amended)

SB 161, Relating to authorizing transitional support services to former recipients of Temporary Assistance for Needy Families (TANF) benefits.
(Committee Substitute)

SB 173, Relating to the refund of cash to a surety in a criminal case.
(Amended)

SB 192, Relating to inclusion of certain ports of entry in state highway planning and funding.
(Committee Substitute)

SB 195, Relating to the Border Trade Advisory Committee.
(Committee Substitute)

SB 217, Relating to the application and enforcement of traffic regulations in certain private subdivisions.
(Amended)

SB 224, Relating to requiring the Texas Department of Transportation to meet with transportation officials of bordering states to discuss transportation and infrastructure issues.
(Committee Substitute)

SB 280, Relating to requiring the Texas Department of Health to prepare a request for information for storing and distributing vaccines.
(Amended)

SB 309, Relating to the application of the sunset review process to certain governmental entities.
(Committee Substitute/Amended)

SB 333, Relating to the state child health plan for certain low-income children.
(Amended)

SB 372, Relating to the reestablishment of service credit in a public retirement system participating in the proportionate retirement program.
(Amended)

SB 416, Relating to the authority of the Texas Department of Transportation in connection with the mitigation of an adverse environmental impact resulting from a state highway improvement project.
(Amended)

SB 467, Relating to dual language immersion programs in certain public schools.
(Amended)

SB 515, Relating to the establishment of an adult fatality review team and to the reporting and investigation of certain adult deaths; providing a penalty.
(Amended)

SB 527, Relating to taking regulatory action against assisted living facilities, including the imposition of administrative penalties.
(Committee Substitute/Amended)

SB 533, Relating to the regulation of certain occupations by the State Board of Dental Examiners.
(Amended)

SB 544, Relating to requiring health maintenance organizations to provide periodic health evaluations.
(Amended)

SB 581, Relating to document preparation costs related to certain mental health proceedings.
(Committee Substitute/Amended)

SB 638, Relating to the taking of a specimen from a person arrested for, charged with, or convicted of certain offenses for the purposes of DNA analysis; providing penalties.
(Amended)

SB 688, Relating to requirements for public notice and hearing on applications for air quality multiple plant permits.
(Amended)

SB 712, Relating to the privacy of certain information provided by consumers to insurers and other related entities; providing a civil penalty.
(Committee Substitute/Amended)

SB 736, Relating to the operation of the self-directed semi-independent agency pilot project; making an appropriation.
(Committee Substitute)

SB 749, Relating to the authority of the Texas Natural Resource Conservation Commission to participate in environmental projects in Mexico.
(Amended)

SB 791, Relating to the imposition of administrative, civil, and criminal penalties and the authorization of emergency license suspension for certain licensing programs regulated by the Texas Department of Health.
(Amended)

SB 886, Relating to motor vehicle size and weight limitations; providing penalties.
(Amended)

SB 893, Relating to evaluating drug purchasing cooperatives.
(Amended)

SB 896, Relating to funds and taxes for county roads.
(Amended)

SB 917, Relating to the aggregation of amounts involved in the offense of breach of computer security to determine punishment.
(Committee Substitute/Amended)

SB 929, Relating to a restriction on the financing of multifamily residential developments by housing authorities and housing finance corporations.
(Committee Substitute)

SB 975, Relating to electronic courses in public schools.
(Amended)

SB 985, Relating to authorizing the governing body of a municipality to enter into a tax abatement agreement with the owner of a leasehold interest in real property that is located in a reinvestment zone.
(Committee Substitute/Amended)

SB 1050, Relating to the regulation of youth camps.
(Amended)

SB 1078, Relating to the date of an independent audit of the management and business operations of the Texas Department of Transportation.
(Amended)

SB 1128, Relating to landscaping and billboards along highways; imposing a civil penalty.

(Committee Substitute)

SB 1190, Relating to technology development and transfer by institutions of higher education.

(Amended)

SB 1224, Relating to occupations regulated by the Texas Commission on Private Security.

(Amended)

SB 1296, Relating to the issuance of general obligation bonds and notes to provide financial assistance to counties for roadway projects to serve border colonias.

(Committee Substitute)

SB 1299, Relating to the creation and duties of a task force on rate-setting methodologies for the Medicaid and state child health plan programs.

(Amended)

SB 1411, Relating to dental services provided under the medical assistance program.

(Committee Substitute/Amended)

SB 1496, Relating to the reassignment of the responsibilities of the Child Care Development Board.

(Amended)

SB 1690, Relating to the taxation of insurance companies and certain insurance agents.

(Amended)

SB 1747, Relating to the offense of theft of livestock from a commission merchant.

(Amended)

SB 1778, Relating to the collection of costs in criminal cases.

(Committee Substitute/Amended)

SB 1783, Relating to enhanced availability of advanced telecommunications service.

(Committee Substitute/Amended)

SB 1815, Relating to establishing a loan program to assist communities that may be affected by federal military base closures.

(Amended)

SB 1839, Relating to certain long-term care facilities.

(Amended)

THE HOUSE HAS REFUSED TO CONCUR IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

HB 154

House Conferees: Thompson - Chair/Chavez/Eiland/Ellis, Dan/Farabee

HB 900

House Conferees: Thompson - Chair/Deshotel/Garcia/Hinojosa/Solis, Jim

HB 1203

House Conferees: Brimer - Chair/Davis, John/Dukes/Elkins/Giddings

HB 1234

House Conferees: Naishtat - Chair/Green/Hinojosa/Kitchen/Reyna, Elvira

HB 1323

House Conferees: Shields - Chair/Dutton/Garcia/Hinojosa/Talton

HB 1739

House Conferees: Martinez Fischer - Chair/Alexander/Noriega/Pickett/Swinford

HB 1763

House Conferees: McCall - Chair/Averitt/Chisum/Gallego/Hochberg

HB 1784

House Conferees: Cook - Chair/Counts/Kolkhorst/Lewis, Ron/Walker

HB 1862

House Conferees: Eiland - Chair/Isett/Janek/Lewis, Glenn/Smithee

HB 1925

House Conferees: Haggerty - Chair/Allen/Hinojosa/Keel/Ritter

THE HOUSE HAS GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

SB 115

House conferees: Hawley - Chair/Hardcastle/Keffer/Ramsay/Turner, Bob

SB 189

House conferees: Dutton - Chair/Hardcastle/Hochberg/Olivo/Turner, Sylvester

SB 312

House conferees: Chisum - Chair/Bosse/Counts/Geren/Walker

SB 516

House conferees: Hawley - Chair/Delisi/Hopson/McClendon/Turner, Bob

SB 536

House conferees: Dutton - Chair/Bosse/Clark/Hope/Janek

SB 730

House conferees: Thompson - Chair/Deshotel/Hinojosa/King, Phil/Talton

SB 1210

House conferees: Dunnam - Chair/Capelo/Deshotel/Goodman/Solis, Jim

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

SB 1 (141 Ayes, 3 Nays, 1 Present Not Voting)

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

MESSAGE FROM THE GOVERNOR

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

OFFICIAL MEMORANDUM
STATE OF TEXAS
OFFICE OF THE GOVERNOR

Austin, Texas
May 24, 2001

MESSAGE

TO THE MEMBERS OF THE SENATE AND HOUSE OF REPRESENTATIVES
OF THE SEVENTY-SEVENTH TEXAS LEGISLATURE, REGULAR SESSION:

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

The Legislature has passed Senate Concurrent Resolution No. 69 requesting that I return Senate Bill No. 1057 by Ellis to the Senate for further consideration. In this instance, I have taken no formal action on Senate Bill No. 1057 and I am agreeing to the request of the Legislature.

While under no obligation to comply with this request and pursuant to established case law, I hereby return the enrolled copy of Senate Bill No. 1057 with this message to the Senate for further consideration.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 24th day of May, 2001.

/s/Rick Perry
Governor of Texas

ATTESTED BY:

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

CONCLUSION OF MORNING CALL

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

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 684 ADOPTED**

Senator Madla called from the President's table the Conference Committee Report on **SB 684**. The Conference Committee Report was filed with the Senate on Thursday, May 17, 2001.

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

Present-not voting: Mr. President.

SENATE BILL 45 WITH HOUSE AMENDMENT

Senator Zaffirini called **SB 45** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 45** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to hardship exemptions from time limits under the temporary assistance for needy families program.

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

SECTION 1. Section 31.0065, Human Resources Code, is amended by adding Subsection (g) to read as follows:

(g) Notwithstanding any other provision of this section, the department shall provide for a person younger than 20 years of age who does not have a high school diploma or high school equivalency certificate a hardship exemption from the time limits under Subsection (b) that applies while the person is participating in educational activities designed to result in receipt of a high school diploma or high school equivalency certificate. If the person attains 20 years of age and has not yet received a high school diploma or high school equivalency certificate, the department may impose a time limit on receipt of financial assistance and transitional benefits of one, two, or three years, as appropriate based on the person's educational status and work experience, computed beginning with the person's 20th birthday.

SECTION 2. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.0066 to read as follows:

Sec. 31.0066. HARDSHIP EXEMPTIONS FROM FEDERAL TIME LIMITS.

(a) The department, the Texas Workforce Commission, and the Health and Human Services Commission shall jointly adopt rules prescribing circumstances that constitute a hardship for purposes of exempting a recipient of financial assistance from the application of time limits imposed by federal law on the receipt of benefits.

(b) The rules must include a broad range of circumstances that reasonably prevent recipients of financial assistance from becoming self-supporting before expiration of the period specified by federal law.

(c) Before adopting a rule under this section, the department, the Texas Workforce Commission, and the Health and Human Services Commission must:

(1) submit the proposed rule to the lieutenant governor and the speaker of the house of representatives for referral to the appropriate standing committees of each house of the legislature, as provided by Section 2001.032, Government Code; and

(2) consider any comments regarding the proposed rule that are provided by those committees in a timely manner.

SECTION 3. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 4. This Act takes effect September 1, 2001, and applies to a person receiving financial assistance on or after that date regardless of the date on which the person began receiving that financial assistance.

The amendment was read.

Senator Zaffirini 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 President asked if there were any motions to instruct the conference committee on **SB 45** 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; Moncrief, Nelson, Carona, and Bernsen.

CONFERENCE COMMITTEE ON HOUSE BILL 2446

Senator Madla called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2446** 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 2446** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Madla, Chair; Gallegos, Van de Putte, Ogden, and Staples.

CONFERENCE COMMITTEE ON HOUSE BILL 787

Senator Madla called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 787** 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 787** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Madla, Chair; Lucio, Harris, Bernsen, and Gallegos.

SENATE RESOLUTION 1182

Senator Jackson offered the following resolution:

WHEREAS, Vernon Beasley, a tall, handsome young man from Hemphill, Texas, met Elizabeth Ross, a beautiful young lady from Alco, Louisiana, at Morningside Baptist Church in Shreveport, Louisiana, in February 1948; and

WHEREAS, He was immediately attracted to her, as she seemed less silly and more mature than most girls her age, and she found him to be very handsome, but thought he was the biggest smart alec she had ever met; and

WHEREAS, The young smart alec asked the beautiful young lady to go out with him, but money was scarce, so most dates consisted of getting together at the homes of friends or family to make fudge, taffy, popcorn, or hot cocoa; and

WHEREAS, Using his East Texas charm, the tall, handsome young man convinced the beautiful Louisiana girl to marry him, and Vernon and Elizabeth Beasley were wed December 15, 1951, in the same church where they had met two years earlier; and

WHEREAS, The Beasleys made their home in Pasadena, Texas, and had four children: Donald Beasley, born October 25, 1952; Brenda Beasley, born February 19, 1954; Barry Beasley, born February 16, 1957; and Helen Beasley, born November 2, 1958; and

WHEREAS, Though they experienced many hard times trying to make ends meet financially, Vernon and Elizabeth Beasley instilled in their children the traits of fine Texas citizens: a love for God and country, respect for others, a solid work ethic, the highest integrity, and an honor for strong family bonds; and

WHEREAS, Vernon and Elizabeth Beasley retired to Lufkin in January 1988, but stay extremely busy with gardening, making crafts, attending bluegrass festivals, and visiting their four children, eight grandchildren, and many other friends and family members; their happy marriage remains a source of joy and inspiration to all who know them; now, therefore, be it

RESOLVED, That the Senate of the 77th Texas Legislature hereby join with the children, grandchildren, and many friends and loved ones of Vernon and Elizabeth Beasley in congratulating them on their 50th wedding anniversary and extend to them sincere best wishes for continued happiness; and, be it further

RESOLVED, That an official copy of this resolution be prepared for the Beasleys as an expression of high regard by 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 Jackson, the resolution was adopted by a viva voce vote.

GUESTS PRESENTED

Senator Jackson was recognized and introduced to the Senate Vernon and Elizabeth Beasley and their children, Helen and Barry.

The Senate welcomed its guests.

SENATE BILL 766 WITH HOUSE AMENDMENT

Senator Madla called **SB 766** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment No. 1

Amend **SB 766** by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS accordingly:

SECTION _____. Subchapter B, Chapter 433, Health and Safety Code, is amended by adding Section 433.0245 to read as follows:

Sec. 433.0245. REQUIREMENTS FOR CERTAIN LOW-VOLUME LIVESTOCK PROCESSING ESTABLISHMENTS. (a) Except as provided by this section, the inspection and regulatory provisions of this chapter do not apply to a low-volume livestock processing establishment that is exempt from federal inspection.

(b) A low-volume livestock processing establishment that is exempt from federal inspection shall register with the department in accordance with rules adopted by the commissioner for registration.

(c) A low-volume livestock processing establishment that is exempt from federal inspection shall develop a sanitary operation procedures plan.

(d) If contaminated livestock can be reasonably traced to a low-volume livestock processing establishment that is exempt from federal inspection, the commissioner may request the attorney general or the district or county attorney in the jurisdiction where the facility is located to institute a civil suit to enjoin the operation of the establishment until the commissioner determines that the establishment has been sanitized and is operating safely.

The amendment was read.

On motion of Senator Madla, the Senate concurred in the House amendment to **SB 766** by a viva voce vote.

SENATE BILL 961 WITH HOUSE AMENDMENT

Senator Moncrief called **SB 961** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment No. 1

SB 961 is amended by adding the following language at the end of Section 1 of the bill:

(d) The department shall not require a salary supplement as a condition for creating or maintaining a position in the region.

The amendment was read.

On motion of Senator Moncrief, the Senate concurred in the House amendment to **SB 961** by a viva voce vote.

SENATE BILL 643 WITH HOUSE AMENDMENT

Senator Madla called **SB 643** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment No. 1

Amend **SB 643** on page 3, line 26 by striking "†" and substituting "15."

The amendment was read.

On motion of Senator Madla, the Senate concurred in the House amendment to **SB 643** by a viva voce vote.

HOUSE BILL 236 RECOMMITTED

On motion of Senator Ellis and by unanimous consent, **HB 236** was recommitted to the conference committee.

SENATE BILL 367 WITH HOUSE AMENDMENTS

Senator Zaffirini called **SB 367** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1 on Third Reading

Amend **SB 367** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.048 to read as follows:

Sec. 533.048. GUARDIANSHIP ADVISORY COMMITTEE. (a) In this section, "institution" means:

(1) an ICF-MR; or

(2) a state hospital, state school, or state center maintained and managed by the department.

(b) The commissioner shall appoint a guardianship advisory committee composed of nine members, five of whom must be parents of residents of institutions.

(c) The commissioner shall designate a member of the advisory committee to serve as presiding officer. The members of the advisory committee shall elect any other necessary officers.

(d) The advisory committee shall meet at the call of the presiding officer.

(e) A member of the advisory committee serves at the will of the commissioner.

(f) A member of the advisory committee may not receive compensation for serving on the advisory committee but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the advisory committee as provided by the General Appropriations Act.

(g) The advisory committee shall develop a plan and make specific recommendations to the department regarding methods to facilitate the appointment of relatives of residents of institutions as guardians of those residents to make decisions regarding appropriate care settings for the residents.

Floor Amendment No. 2 on Third Reading

Amend Floor Amendment No. 1 to **SB 367** on third reading by adding the following appropriately numbered item to the amendment:

(__) In SECTION 1 of the bill, following proposed Section 531.0244(e), Government Code (House committee report page 3, between lines 20 and 21), insert the following subsection and reletter subsequent subsections appropriately:

(f) This section does not create a cause of action.

The amendments were read.

On motion of Senator Zaffirini, the Senate concurred in the House amendments to **SB 367** by a viva voce vote.

SENATE BILL 377 WITH HOUSE AMENDMENT

Senator Shapiro called **SB 377** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1 on Third Reading

Amend **SB 377** on third reading in SECTION 1 of the bill, in amended Section 251.18(a), Alcoholic Beverage Code, by striking added Subdivision (2) (House committee printing, page 1, lines 12-20), and substituting the following:

(2) beer and wine in an incorporated city or town that does not permit beer and wine sales on September 1, 2001, and is located in:

(A) two counties:

(i) that each have a population of at least 250,000 but not more than one million; and

(ii) one of which contains a city or town with a population of 125,000 or more; or

(B) three counties:

(i) that each have a population of not more than 300,000; and

(ii) one of which contains a city or town with a population of 20,000 or more.

The amendment was read.

On motion of Senator Shapiro, the Senate concurred in the House amendment to **SB 377** by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 583 ADOPTED**

Senator Duncan called from the President's table the Conference Committee Report on **SB 583**. The Conference Committee Report was filed with the Senate on Thursday, May 17, 2001.

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

PHYSICIAN OF THE DAY

Senator Moncrief was recognized and presented Dr. Michael McShan of Kilgore as the Physician of the Day.

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

GUESTS PRESENTED

Senator Shapiro was recognized and introduced to the Senate Ann Wagner, Co-chair of the National Republican Party and Susan Weddington, State Chair of the Republican Party.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Haywood was recognized and introduced to the Senate National President of Future Farmers of America Trent McKnight of Wichita Falls.

The Senate welcomed Trent.

SENATE RESOLUTION 1169

Senator Carona offered the following resolution:

WHEREAS, Detta Haffelder, administrative director for the office of Senator John J. Carona, has manifested an exceptional level of dedication and expertise throughout her career as a legislative staff member; and

WHEREAS, Beginning as an administrative aide for Representative Libby Linebarger in 1993, she has also served as administrative secretary for Senator Bill Sims and as administrative aide for Representative Debra Danburg; and

WHEREAS, Her wide-ranging talents, her detailed knowledge of the legislature, and her ability to maintain a comprehensive view of all the business at hand have made her an invaluable asset both to the legislators for whom she has worked and to their constituents; and

WHEREAS, A native Texan, Detta has developed a deep love for the Texas Senate, and her contributions as a consummate administrative director are indeed deserving of special recognition; now, therefore, be it

RESOLVED, That the Senate of the 77th Texas Legislature hereby recognize Detta Haffelder as "Honorary Doorkeeper in the Texas Senate"—the first female doorkeeper in Senate history—in consideration of her outstanding service and her abiding commitment to this chamber; and, be it further

RESOLVED, That an official copy of this resolution be prepared for Detta as an expression of high regard by 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 Carona, the resolution was adopted by a viva voce vote.

GUEST PRESENTED

Senator Carona was recognized and introduced to the Senate Detta Haffelder.

The Senate welcomed Ms. Haffelder.

SENATE BILL 218 WITH HOUSE AMENDMENTS

Senator Shapiro called **SB 218** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 218** (house committee report) as follows:

(1) Between SECTIONS 1 and 2 of the bill (page 3, between lines 14 and 15), insert the following new SECTION 2:

SECTION 2. Section 44.008(d), Education Code, is amended to read as follows:

(d) A copy of the annual audit report, approved by the board of trustees, shall be filed by the district with the agency not later than the 150th [~~120th~~] day after the end of the fiscal year for which the audit was made. If the board of trustees declines or refuses to approve its auditor's report, it shall nevertheless file with the agency a copy of the audit report with its statement detailing reasons for failure to approve the report.

(2) In existing SECTION 2 of the bill (page 3, line 15), strike "SECTION 2" and substitute "SECTION 3".

(3) Following existing SECTION 2 of the bill (page 3, following line 22), insert the following:

(d) Section 44.008, Education Code, as amended by this Act, applies beginning with the annual audit of school districts for the 2001-2002 school year.

Floor Amendment No. 2

Amend **SB 218** (House Committee Report, 1st Printing) as follows:

Insert ", in consultation with the Comptroller," between "shall" and "develop" in Section 1 of the bill, page 1, line 14.

The amendments were read.

On motion of Senator Shapiro, the Senate concurred in the House amendments to **SB 218** by a viva voce vote.

SENATE BILL 177 WITH HOUSE AMENDMENT

Senator Madla called **SB 177** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 177** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to electronic monitoring devices in the rooms of residents of convalescent or nursing homes or related institutions; providing a criminal penalty.

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

SECTION 1. Chapter 242, Health and Safety Code, is amended by adding Subchapter R to read as follows:

SUBCHAPTER R. ELECTRONIC MONITORING OF RESIDENT'S ROOM

Sec. 242.841. DEFINITIONS. In this subchapter:

(1) "Authorized electronic monitoring" means the placement of an electronic monitoring device in the room of a resident of an institution and making tapes or recordings with the device after making a request to the institution to allow electronic monitoring.

(2) "Electronic monitoring device";

(A) includes:

(i) video surveillance cameras installed in the room of a resident; and

(ii) audio devices installed in the room of a resident designed to acquire communications or other sounds occurring in the room; and

(B) does not include an electronic, mechanical, or other device that is specifically used for the nonconsensual interception of wire or electronic communications.

Sec. 242.842. CRIMINAL AND CIVIL LIABILITY. (a) It is a defense to prosecution under Section 16.02, Penal Code, or any other statute of this state under which it is an offense to intercept a communication or disclose or use an intercepted communication, that the communication was intercepted by an electronic monitoring device placed in the room of a resident of an institution.

(b) This subchapter does not affect whether a person may be held to be civilly liable under other law in connection with placing an electronic monitoring device in the room of a resident of an institution or in connection with using or disclosing a tape or recording made by the device except:

(1) as specifically provided by this subchapter; or

(2) to the extent that liability is affected by:

(A) a consent or waiver signed under this subchapter; or

(B) the fact that authorized electronic monitoring is required to be conducted with notice to persons who enter a resident's room.

(c) A communication or other sound acquired by an audio electronic monitoring device installed under the provisions of this subchapter concerning authorized electronic monitoring is not considered to be:

(1) an oral communication as defined by Section 1, Article 18.20, Code of Criminal Procedure; or

(2) a communication as defined by Section 123.001, Civil Practice and Remedies Code.

Sec. 242.843. COVERT USE OF ELECTRONIC MONITORING DEVICE; LIABILITY OF DEPARTMENT OR INSTITUTION. (a) For purposes of this subchapter, the placement and use of an electronic monitoring device in the room of a resident is considered to be covert if:

(1) the placement and use of the device is not open and obvious; and

(2) the institution and the department are not informed about the device by the resident, by a person who placed the device in the room, or by a person who is using the device.

(b) The department and the institution may not be held to be civilly liable in connection with the covert placement or use of an electronic monitoring device in the room of a resident.

Sec. 242.844. REQUIRED FORM ON ADMISSION. The department by rule shall prescribe a form that must be completed and signed on a resident's admission to an institution by or on behalf of the resident. The form must state:

(1) that a person who places an electronic monitoring device in the room of a resident or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another;

(2) that a person who covertly places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device in the room of a resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device;

(3) that a resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring under Subchapter R, Chapter 242, Health and Safety Code, and that if the institution refuses to permit the electronic monitoring

or fails to make reasonable physical accommodations for the authorized electronic monitoring that the person should contact the Texas Department of Human Services;

(4) the basic procedures that must be followed to request authorized electronic monitoring;

(5) the manner in which this chapter affects the legal requirement to report abuse or neglect when electronic monitoring is being conducted; and

(6) any other information regarding covert or authorized electronic monitoring that the department considers advisable to include on the form.

Sec. 242.845. AUTHORIZED ELECTRONIC MONITORING: WHO MAY REQUEST. (a) If a resident has capacity to request electronic monitoring and has not been judicially declared to lack the required capacity, only the resident may request authorized electronic monitoring under this subchapter, notwithstanding the terms of any durable power of attorney or similar instrument.

(b) If a resident has been judicially declared to lack the capacity required for taking an action such as requesting electronic monitoring, only the guardian of the resident may request electronic monitoring under this subchapter.

(c) If a resident does not have capacity to request electronic monitoring but has not been judicially declared to lack the required capacity, only the legal representative of the resident may request electronic monitoring under this subchapter. The department by rule shall prescribe:

(1) guidelines that will assist institutions, family members of residents, advocates for residents, and other interested persons to determine when a resident lacks the required capacity; and

(2) who may be considered to be a resident's legal representative for purposes of this subchapter, including:

(A) persons who may be considered the legal representative under the terms of an instrument executed by the resident when the resident had capacity; and

(B) persons who may become the legal representative for the limited purpose of this subchapter under a procedure prescribed by the department.

Sec. 242.846. AUTHORIZED ELECTRONIC MONITORING: FORM OF REQUEST; CONSENT OF OTHER RESIDENTS IN ROOM. (a) A resident or the guardian or legal representative of a resident who wishes to conduct authorized electronic monitoring must make the request to the institution on a form prescribed by the department.

(b) The form prescribed by the department must require the resident or the resident's guardian or legal representative to:

(1) release the institution from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device;

(2) choose, when the electronic monitoring device is a video surveillance camera, whether the camera will always be unobstructed or whether the camera should be obstructed in specified circumstances to protect the dignity of the resident; and

(3) obtain the consent of other residents in the room, using a form prescribed for this purpose by the department, if the resident resides in a multiperson room.

(c) Consent under Subsection (b)(3) may be given only:

(1) by the other resident or residents in the room;

(2) by the guardian of a person described by Subdivision (1), if the person has been judicially declared to lack the required capacity; or

(3) by the legal representative who under Section 242.845(c) may request electronic monitoring on behalf of a person described by Subdivision (1), if the person does not have capacity to sign the form but has not been judicially declared to lack the required capacity.

(d) The form prescribed by the department under Subsection (b)(3) must condition the consent of another resident in the room on the other resident also releasing the institution from any civil liability for a violation of the person's privacy rights in connection with the use of the electronic monitoring device.

(e) Another resident in the room may:

(1) when the proposed electronic monitoring device is a video surveillance camera, condition consent on the camera being pointed away from the consenting resident; and

(2) condition consent on the use of an audio electronic monitoring device being limited or prohibited.

(f) If authorized electronic monitoring is being conducted in the room of a resident and another resident is moved into the room who has not yet consented to the electronic monitoring, authorized electronic monitoring must cease until the new resident has consented in accordance with this section.

(g) The department may include other information that the department considers to be appropriate on either of the forms that the department is required to prescribe under this section.

(h) The department may adopt rules prescribing the place or places that a form signed under this section must be maintained and the period for which it must be maintained.

(i) Authorized electronic monitoring:

(1) may not commence until all request and consent forms required by this section have been completed and returned to the institution; and

(2) must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room.

Sec. 242.847. AUTHORIZED ELECTRONIC MONITORING: GENERAL PROVISIONS. (a) An institution shall permit a resident or the resident's guardian or legal representative to monitor the room of the resident through the use of electronic monitoring devices.

(b) The institution shall require a resident who conducts authorized electronic monitoring or the resident's guardian or legal representative to post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(c) Authorized electronic monitoring conducted under this subchapter is not compulsory and may be conducted only at the request of the resident or the resident's guardian or legal representative.

(d) An institution may not refuse to admit an individual to residency in the institution and may not remove a resident from the institution because of a request to conduct authorized electronic monitoring. An institution may not remove a resident from the institution because covert electronic monitoring is being conducted by or on behalf of a resident.

(e) An institution shall make reasonable physical accommodation for authorized electronic monitoring, including:

(1) providing a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(2) providing access to power sources for the video surveillance camera or other electronic monitoring device.

(f) The resident or the resident's guardian or legal representative must pay for all costs associated with conducting electronic monitoring, other than the costs of electricity. The resident or the resident's guardian or legal representative is responsible for:

(1) all costs associated with installation of equipment; and

(2) maintaining the equipment.

(g) An institution may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. The department may adopt rules regarding the safe placement of an electronic monitoring device.

(h) If authorized electronic monitoring is conducted, the institution may require the resident or the resident's guardian or legal representative to conduct the electronic monitoring in plain view.

(i) An institution may but is not required to place a resident in a different room to accommodate a request to conduct authorized electronic monitoring.

Sec. 242.848. REPORTING ABUSE AND NEGLECT. (a) For purposes of the duty to report abuse or neglect under Section 242.122 and the criminal penalty for the failure to report abuse or neglect under Section 242.131, a person who is conducting electronic monitoring on behalf of a resident under this subchapter is considered to have viewed or listened to a tape or recording made by the electronic monitoring device on or before the 14th day after the date the tape or recording is made.

(b) If a resident who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring under this subchapter gives a tape or recording made by the electronic monitoring device to a person and directs the person to view or listen to the tape or recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the tape or recording is considered to have viewed or listened to the tape or recording on or before the seventh day after the date the person receives the tape or recording for purposes of the duty to report abuse or neglect under Section 242.122 and of the criminal penalty for the failure to report abuse or neglect under Section 242.131.

(c) A person is required to report abuse based on the person's viewing of or listening to a tape or recording only if the incident of abuse is acquired on the tape or recording. A person is required to report neglect based on the person's viewing of or listening to a tape or recording only if it is clear from viewing or listening to the tape or recording that neglect has occurred.

(d) If abuse or neglect of the resident is reported to the institution and the institution requests a copy of any relevant tape or recording made by an electronic monitoring device, the person who possesses the tape or recording shall provide the institution with a copy at the institution's expense.

Sec. 242.849. USE OF TAPE OR RECORDING BY AGENCY OR COURT. (a) Subject to applicable rules of evidence and procedure and the requirements of this section, a tape or recording created through the use of covert or authorized electronic monitoring described by this subchapter may be admitted into evidence in a civil or criminal court action or administrative proceeding.

(b) A court or administrative agency may not admit into evidence a tape or recording created through the use of covert or authorized electronic monitoring or take or authorize action based on the tape or recording unless:

(1) if the tape or recording is a video tape or recording, the tape or recording shows the time and date that the events acquired on the tape or recording occurred;

(2) the contents of the tape or recording have not been edited or artificially enhanced; and

(3) if the contents of the tape or recording have been transferred from the original format to another technological format, the transfer was done by a qualified professional and the contents of the tape or recording were not altered.

(c) A person who sends more than one tape or recording to the department shall identify for the department each tape or recording on which the person believes that an incident of abuse or evidence of neglect may be found. The department may adopt rules encouraging persons who send a tape or recording to the department to identify the place on the tape or recording that an incident of abuse or evidence of neglect may be found.

Sec. 242.850. NOTICE AT ENTRANCE TO INSTITUTION. Each institution shall post a notice at the entrance to the institution stating that the rooms of some residents may be being monitored electronically by or on behalf of the residents and that the monitoring is not necessarily open and obvious. The department by rule shall prescribe the format and the precise content of the notice.

Sec. 242.851. ENFORCEMENT. (a) The department may impose appropriate sanctions under this chapter on an administrator of an institution who knowingly:

(1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;

(2) refuses to admit an individual to residency or allows the removal of a resident from the institution because of a request to conduct authorized electronic monitoring;

(3) allows the removal of a resident from the institution because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates another provision of this subchapter.

(b) The department may assess an administrative penalty under Section 242.066 against an institution that:

(1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;

(2) refuses to admit an individual to residency or allows the removal of a resident from the institution because of a request to conduct authorized electronic monitoring;

(3) allows the removal of a resident from the institution because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates another provision of this subchapter.

Sec. 242.852. CRIMINAL OFFENSE. (a) A person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident's room in accordance with this subchapter or a tape or recording made by the device commits an offense. An offense under this section is a Class B misdemeanor.

(b) It is a defense to prosecution under Subsection (a) that the person took the action with the effective consent of the resident on whose behalf the electronic monitoring device was installed or the resident's guardian or legal representative.

SECTION 2. Subsection (a), Section 242.501, Health and Safety Code, is amended to read as follows:

(a) The department by rule shall adopt a statement of the rights of a resident. The statement must be consistent with Chapter 102, Human Resources Code, but shall reflect the unique circumstances of a resident at an institution. At a minimum, the statement of the rights of a resident must address the resident's constitutional, civil, and legal rights and the resident's right:

- (1) to be free from abuse and exploitation;
- (2) to safe, decent, and clean conditions;
- (3) to be treated with courtesy, consideration, and respect;
- (4) to not be subjected to discrimination based on age, race, religion, sex, nationality, or disability and to practice the resident's own religious beliefs;
- (5) to place in the resident's room an electronic monitoring device that is owned and operated by the resident or provided by the resident's guardian or legal representative;
- (6) to privacy, including privacy during visits and telephone calls;
- (7) [~~(6)~~] to complain about the institution and to organize or participate in any program that presents residents' concerns to the administrator of the institution;
- (8) [~~(7)~~] to have information about the resident in the possession of the institution maintained as confidential;
- (9) [~~(8)~~] to retain the services of a physician the resident chooses, at the resident's own expense or through a health care plan, and to have a physician explain to the resident, in language that the resident understands, the resident's complete medical condition, the recommended treatment, and the expected results of the treatment;
- (10) [~~(9)~~] to participate in developing a plan of care, to refuse treatment, and to refuse to participate in experimental research;
- (11) [~~(10)~~] to a written statement or admission agreement describing the services provided by the institution and the related charges;
- (12) [~~(11)~~] to manage the resident's own finances or to delegate that responsibility to another person;
- (13) [~~(12)~~] to access money and property that the resident has deposited with the institution and to an accounting of the resident's money and property that are deposited with the institution and of all financial transactions made with or on behalf of the resident;
- (14) [~~(13)~~] to keep and use personal property, secure from theft or loss;
- (15) [~~(14)~~] to not be relocated within the institution, except in accordance with standards adopted by the department under Section 242.403;
- (16) [~~(15)~~] to receive visitors;
- (17) [~~(16)~~] to receive unopened mail and to receive assistance in reading or writing correspondence;
- (18) [~~(17)~~] to participate in activities inside and outside the institution;
- (19) [~~(18)~~] to wear the resident's own clothes;
- (20) [~~(19)~~] to discharge himself or herself from the institution unless the resident is an adjudicated mental incompetent;
- (21) [~~(20)~~] to not be discharged from the institution except as provided in the standards adopted by the department under Section 242.403; and
- (22) [~~(21)~~] to be free from any physical or chemical restraints imposed for the purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

SECTION 3. Section 242.653, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

(f) The committee shall monitor the implementation of Subchapter R and study the impact of that law on the department, institutions, and residents.

SECTION 4. The Texas Department of Human Services shall devise a procedure under which current residents of convalescent and nursing homes and related institutions, or, when appropriate, another person on a resident's behalf, are encouraged to sign the form that is required to be signed on admission under Section 242.844, Health and Safety Code, as added by this Act.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

The amendment was read.

Senator Madla moved to concur in the House amendment to **SB 177**.

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

Present-not voting: Mr. President.

SENATE BILL 355 WITH HOUSE AMENDMENTS

Senator Lindsay called **SB 355** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 355** as follows:

(1) In SECTION 1 of the bill, in amended Section 242.501(a)(22), Health and Safety Code (House Committee Printing, page 3, line 17), strike "a treating physician and pharmacist" and substitute "the person prescribing the medication or that person's designee".

(2) In SECTION 2 of the bill, in added Section 242.505(c)(2), Health and Safety Code (House Committee Printing, page 5, lines 6 and 7), strike "treating physician or a person designated by the physician" and substitute "person prescribing the medication or that person's designee".

(3) In SECTION 2 of the bill, in added Section 242.505(c)(4), Health and Safety Code (House Committee Printing, page 5, lines 22 and 23), strike "treating physician or a person designated by the physician" and substitute "person prescribing the medication or that person's designee".

(4) In SECTION 2 of the bill, in added Section 242.505(e), Health and Safety Code (House Committee Printing, page 6, lines 1 and 4), strike "physician" in each place it appears and substitute "person".

Floor Amendment No. 2

Amend **SB 355**, in SECTION 2 of the bill, in added Section 242.505, Health and Safety Code (Committee Printing, page 6, between lines 10 and 11), by inserting a new Subsection (f) to read as follows:

(f) A physician or a person designated by the physician is not liable for civil damages or an administrative penalty and is not subject to disciplinary action for a breach of confidentiality of medical information for a disclosure of the information provided under Subsection (c)(2) made by the resident or the person authorized by law to consent on behalf of the resident that occurs while the information is in the possession or control of the resident or the person authorized by law to consent on behalf of the resident.

The amendments were read.

Senator Lindsay moved to concur in the House amendments to **SB 355**.

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

Present-not voting: Mr. President.

SENATE JOINT RESOLUTION 37 WITH HOUSE AMENDMENT

Senator Lucio called **SJR 37** from the President's table for consideration of the House amendment to the resolution.

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

Amendment

Amend **SJR 37** by substituting in lieu thereof the following:

A JOINT RESOLUTION

proposing a constitutional amendment authorizing the issuance of general obligation bonds or notes to provide financial assistance to counties for roadway projects to serve border colonias.

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

SECTION 1. Article III, Texas Constitution, is amended by adding Section 49-1 to read as follows:

Sec. 49-1. (a) To fund financial assistance to counties for roadways to serve border colonias, the legislature by general law may authorize the governor to authorize the Texas Public Finance Authority or its successor to issue general obligation bonds or notes of the State of Texas in an aggregate amount not to exceed \$175 million and to enter into related credit agreements. Except as provided by Subsection (c) of this section, the proceeds from the sale of the bonds and notes may be used only to provide financial assistance to counties for projects to provide access roads to connect border colonias with public roads. Projects may include the construction of colonia access roads, the acquisition of materials used in maintaining colonia access roads, and projects related to the construction of colonia access roads, such as projects for the drainage of the roads.

(b) The Texas Transportation Commission may, in its discretion and in consultation with the office of the governor, determine what constitutes a border colonia for purposes of selecting the counties and projects that may receive assistance under this section.

(c) A portion of the proceeds from the sale of the bonds and notes and a portion of the interest earned on the bonds and notes may be used to pay:

- (1) the costs of administering projects authorized under this section; and
- (2) all or part of a payment owed or to be owed under a credit agreement.

(d) The bonds and notes authorized under this section constitute a general obligation of the state. While any of the bonds or notes or interest on the bonds or notes is outstanding and unpaid, there is appropriated out of the general revenue fund in each fiscal year an amount sufficient to pay the principal of and interest on the bonds and notes that mature or become due during the fiscal year, including an amount sufficient to make payments under a related credit agreement.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment authorizing the issuance of state general obligation bonds and notes to provide financial assistance to counties for roadway projects to serve border colonias."

The amendment was read.

Senator Lucio moved to concur in the House amendment to **SJR 37**.

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

Present-not voting: Mr. President.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 24, 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 304, Honoring Colby Donaldson of Dallas on his award.

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

SENATE BILL 697 WITH HOUSE AMENDMENTS

Senator Wentworth called **SB 697** 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 697** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the regulation of the practice of professional engineering.

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

SECTION 1. Section 8, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), is amended by amending Subsection (c) and adding Subsection (e) to read as follows:

(c) The Board by rule may require ~~[recognize, prepare, or administer]~~ continuing education ~~[programs]~~ for persons regulated by the Board under this Act. Rules adopted under this subsection:

(1) may not require a license holder to obtain more than eight hours of continuing education in one year;

(2) shall permit a license holder to certify at the time the license is renewed that the license holder has complied with the Board's continuing education requirements; and

(3) shall permit a license holder to receive continuing education credit for educational, technical, ethical, or professional management activities related to the practice of engineering, including:

(A) successfully completing or auditing a course sponsored by a college or university;

(B) successfully completing a course certified by a professional or trade organization;

(C) attending a seminar, tutorial, short course, correspondence course, videotaped course, or televised course;

(D) participating in an in-house course sponsored by a corporation or other entity;

(E) teaching a course described by Paragraphs (A)-(D) of this subdivision;

(F) writing a published article, paper, or book;

(G) making or attending a presentation at a meeting of a technical or engineering management society or organization or writing a paper presented at such a meeting;

(H) participating in the activities of a professional society or association, including serving on a committee of the organization; and

(I) engaging in self-directed study. [~~Participation in the programs is voluntary.~~]

(e) At the request of any person, the Board may review a proposal for the procurement of services issued by a governmental entity and issue a finding regarding whether the services are within the scope of the practice of professional engineering for purposes of Subchapter A, Chapter 2254, Government Code.

SECTION 2. Section 13, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), is amended by adding Subsection (f) to read as follows:

(f) The Board by rule may adopt a registration fee for a sole proprietorship that is equal to half of the registration fee for other engineering firms.

SECTION 3. Section 16.1, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16.1. EXPIRATION DATES OF LICENSES AND REGISTRATIONS. (a) The board by rule may adopt a system under which licenses and registrations expire on various dates during the year, and the dates for reinstatement shall be adjusted accordingly.

(b) The board by rule may adopt a system under which the registration of a sole proprietorship expires on the same date the sole proprietor's license expires.

SECTION 4. Section 20, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), is amended by adding Subsection (h) to read as follows:

(h) This Act does not:

(1) apply to a sole proprietorship, firm, partnership, joint stock association, corporation, or other business entity or the entity's employees or contractors to the extent the entity's products or services:

(A) are provided or sold to an agency or department of the United States government or the government of a foreign country and involve the design, development, production, sale, or provision of defense products or services;

(B) consist of or support commercial aircraft and the entity holds a certificate issued by the Federal Aviation Administration under 14 C.F.R. Chapter 21; or

(C) consist of space vehicles or space services that are:

(i) subject to licensing or regulation by an agency or department of the United States government under Title 14 or 47, Code of Federal Regulations; or

(ii) for sale or use outside the United States; or

(2) prohibit the use of the term "engineer" or "engineering" in a job title or personnel classification by an employee or contractor described by Subdivision (1) to the extent that the use of the title or classification is related to activities described by that subdivision.

SECTION 5. Rules adopted under Section 8(c), The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), as amended by this Act, may not apply to the renewal of a license before January 1, 2004.

SECTION 6. This Act takes effect September 1, 2001.

Floor Amendment No. 1

Amend **CSSB 697**, house committee printing, in SECTION 4 of the bill, in added Subparagraph (i), Paragraph (C), Subdivision (1), Subsection (h), Section 20, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), (page 4, line 2), by striking "14 or 47, Code of Federal Regulations:" and substituting "14, 47, or 48, Code of Federal Regulations:".

Floor Amendment No. 3

Amend **CSSB 697**, page 3, line 14, by adding a new Section 4 and renumbering the subsequent sections as follows:

Section 3: Section 20. EXEMPTIONS (a) The following persons shall be exempt from the licensure provisions of this Act, however, the Board may require those practicing engineering in Texas who are exempt and not licensed to register and pay a fee not to exceed \$25, provided that such persons are not directly or indirectly represented or held out to the public to be legally qualified to engage in the practice of engineering:

Floor Amendment No. 4

Amend **CSSB 697**, house committee printing, as follows:

(1) Insert a new SECTION 1 of the bill (page 1, between lines 4 and 5), to read as follows:

SECTION 1. Subdivision (4), Section 2, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) is amended to read as follows:

(4) "Practice of engineering," or "practice of professional engineering" shall mean any service or creative work, either public or private, the adequate performance of which requires engineering education, training and experience in the application of special knowledge or judgment of the mathematical, physical, or engineering sciences to such services or creative work.

To the extent the following services or types of creative work meet this definition, the term includes consultation, investigation, evaluation, analysis, planning, engineering for program management, providing an expert engineering opinion or testimony, engineering for testing or evaluating materials for construction and other engineering uses, performing technical research on projects fully or partially underwritten by a non-public entity, and mapping; design, conceptual design, or conceptual design coordination of engineering works and systems; development or optimization of plans and specifications for engineering works and systems; planning the use or alteration of land and water or the design or analysis of works or systems for the use or alteration of land and water; teaching advanced engineering subjects; performing engineering surveys and studies; engineering for construction, alteration, or repair of real property; engineering for preparation of operating and maintenance manuals; and engineering for review of the construction or installation of engineered works to monitor compliance with drawings and specifications.

The activities included in the practice of engineering include services, designs, analyses, or other work performed for a public or private entity in connection with utilities, structures, buildings, machines, equipment, processes, systems, works, projects, and industrial or consumer products or equipment of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature and include other professional services necessary for the planning, progress, and completion of any engineering service.

In this subdivision:

(A) "Design coordination" includes the review and coordination of technical submissions prepared by others, including the work of other professionals working with or under the direction of an engineer with due professional regard for the abilities of all professional parties involved in a multidisciplinary effort.

(B) "Engineering surveys" includes all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of an engineered project, but does not include the surveying of real property and other activities regulated under the Professional Land Surveying Practices Act (Article 5282c, Vernon's Texas Civil Statutes).

(2) Renumber the subsequent SECTIONS of the bill appropriately.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 697** on third reading as follows:

(1) In SECTION 3 of the bill (House Committee Printing page 2, lines 24-26) strike proposed Subsection (f), Section 13, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), and substitute the following:

(f) The Board by rule shall adopt a registration fee for a sole proprietorship that is equal to not more than half of the registration fee for other engineering firms.

(2) In SECTION 4 of the bill, in added Subsection (b), Section 16.1, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) (House Committee Printing page 3, line 7), strike "may" and substitute "shall".

Floor Amendment No. 2 on Third Reading

Amend **CSSB 697** on third reading as follows:

(1) Strike Amendment No. 4 by Callegari (second reading).
 (2) In the section of the bill amending Section 20, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), in the introductory language for that section (house committee printing page 3, line 12), strike "Subsection (h)" and substitute "Subsections (h) and (i)".

(3) After the section of the bill adding proposed Section 20(h), The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) (house committee printing page 4, after line 9), insert the following:

(i) The board shall develop written guidelines, in consultation with representatives of public and private institutions of higher education, consulting engineers, private industry, and the Texas Higher Education Coordinating Board, that describe a distinction between engineering research conducted by faculty at a public or private institution of higher education and other activities conducted by those faculty that constitute engineering consulting or the offering of engineering services to the public. The guidelines developed under this subsection do not affect or apply to research or consulting performed by private industry.

(4) Renumber the sections of the bill appropriately.

The amendments were read.

On motion of Senator Wentworth, the Senate concurred in the House amendments to **SB 697** by a viva voce vote.

BILLS AND RESOLUTIONS SIGNED

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

SB 18, SB 40, SB 53, SB 159, SB 194, SB 200, SB 214, SB 252, SB 257, SB 263, SB 283, SB 332, SB 390, SB 395, SB 454, SB 456, SB 482, SB 486, SB 496, SB 497, SB 505, SB 531, SB 557, SB 586, SB 593, SB 625, SB 671, SB 691, SB 720, SB 751, SB 769, SB 799, SB 840, SB 847, SB 869, SB 903, SB 932, SB 998, SB 1001, SB 1006, SB 1016, SB 1024, SB 1036, SB 1053, SB 1064, SB 1085, SB 1160, SB 1174, SB 1176, SB 1180, SB 1214, SB 1226, SB 1235, SB 1288, SB 1293, SB 1294, SB 1302, SB 1345, SB 1353, SB 1367, SB 1390, SB 1396, SB 1417, SB 1470, SB 1581, SB 1632, SB 1659, SB 1683, SB 1713, SB 1727, SB 1732, SB 1736, SB 1758, SB 1759, SB 1781, SB 1782, SB 1784, SB 1793, SB 1796, SB 1800, SB 1807, SB 1808, SB 1818, SB 1823, SB 1831, SB 1840, SCR 1, SCR 2, SCR 21, SCR 24, SCR 35, SCR 37, SCR 51, SCR 54, SJR 32.

SENATE BILL 158 WITH HOUSE AMENDMENT

Senator Truan called **SB 158** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 158**, SECTION 1 of the House Committee Report (on page 1, between lines 22 and 23), by inserting new subdivision (3) as follows and renumbering accordingly:

"(3) the disadvantages of taking courses to prepare for a high school equivalency examination relative to the benefits of taking courses leading to a high school diploma;"

The amendment was read.

Senator Truan moved to concur in the House amendment to **SB 158**.

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

Present-not voting: Mr. President.

SENATE RESOLUTION 1181

Senator Jackson offered the following resolution:

WHEREAS, The academic team of the George A. Thompson Intermediate School in Pasadena has won the National Academic League Championships, and their stellar triumph warrants special legislative commendation; and

WHEREAS, On April 6, 2001, this fine group of students, led by teacher Carolyn Carmichael, defeated the Snowcrest Junior High team 42-38, ensuring themselves a place in the final four of the National Academic League Tournament; and

WHEREAS, They garnered the national championship title when they soundly defeated the Wichita, Kansas, team during the finals held at the Houston Exxon Building; and

WHEREAS, Thompson Intermediate School is under the direction of principal Gregory Jones and vice principals Bill Saxon and Steve Black; these fine administrators are undoubtedly proud of their school's exceptional academic team, which has won the national competition three times in the past eight years; and

WHEREAS, This year's outstanding team members include Christine Tran, Van Nguyen, Lam Le, Justin Lai, Ana Lopez, Courtney Grimes, Minh Bui, Vishal Patel, Henry Dao, Adrienne Ingalls, Grace Kim, Wesley Bennett, Michael Cole, Richard Quach, Rustam Abedinzadeh, Bruce Le, Tracie Thomason, Ryan Dawson, Ryan Fox, and Tiffany Lily; and

WHEREAS, These students have excelled in the face of staunch competition, and their hard work, dedicated efforts, and sterling performance are truly commendable; now, therefore, be it

RESOLVED, That the Senate of the 77th Texas Legislature hereby congratulate George A. Thompson Intermediate School's academic team and extend to its members best wishes for continued success; and, be it further

RESOLVED, That an official copy of this resolution be prepared for the team members as an expression of high regard by the Texas Senate.

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

GUESTS PRESENTED

Senator Jackson was recognized and introduced to the Senate students from Thompson Intermediate School in Pasadena.

The Senate welcomed its guests.

SENATE BILL 272 WITH HOUSE AMENDMENTS

Senator Carona called **SB 272** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 272** as follows:

- (1) On page 3, line 2, strike "\$1,000" and replace it with "\$500".
- (2) On page 3, line 6, strike "\$2,500" and replace it with "\$1050".
- (3) On page 3, line 7, insert the following:

(3) 18 percent a year on that part of the cash advance that is more than the amount computed for Subdivision (2) but less than or equal to an amount computed under Subchapter C, Chapter 341, using the reference base amount of \$2,500.

Floor Amendment No. 2

Amend **SB 272** as follows:

Delete Section 8 and add the following:

SECTION 8. Section 302.001, Finance Code, is amended by adding Subsection (d) to read as follows:

(d) In addition to interest authorized by Subsection (b), a loan providing for a rate of interest that is 10 percent a year or less may provide for a delinquency charge on the amount of any payment in default for a period of not less than 10 days in an amount not to exceed the greater of five percent of the amount of the payment or \$7.50. The charging of the delinquency charge does not make the loan subject to Chapter 342 or any other provision of Subtitle B.

SECTION 9. Section 342.004, Finance Code, is amended by adding Subsection (c) to read as follows:

(c) A loan described by Section 302.001(d) may provide for a delinquency charge as provided by that section without being subject to this chapter or any other provision of this subtitle.

SECTION 10. Section 342.005, Finance Code, is amended to read as follows:

Sec. 342.005. **APPLICABILITY OF CHAPTER.** Except as provided by Sections 302.001(d) and 342.004(c), a [A] loan is subject to this chapter if the loan:

- (1) provides for interest in excess of 10 percent a year;
- (2) is extended primarily for personal, family, or household use;
- (3) is made by a person engaged in the business of making, arranging, or negotiating those types of loans; and
- (4) either:
 - (A) is not secured by a lien on real property; or
 - (B) is described by Section 342.001(3), 342.301, or 342.456 and is predominantly payable in monthly installments.

SECTION 11. 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. 3

Amend **SB 272** by inserting an appropriately numbered section and by renumbering the remaining sections appropriately:

SECTION _____. Chapter 339, Finance Code, is amended to clarify and confirm existing law by adding Section 339.005 to read as follows:

Sec. 339.005. APPLICABILITY OF CERTAIN FEDERAL LAW. This title does not override or restrict the applicability of 12 U.S.C. Section 1735f-7a.

The amendments were read.

On motion of Senator Carona, the Senate concurred in the House amendments to **SB 272** by a viva voce vote.

SENATE RESOLUTION 1163

Senator Moncrief offered the following resolution:

WHEREAS, Dr. Patricia R. Cole, known throughout the legislative community as "Pat," is celebrating more than 25 years of leadership in health and human services public policy advocacy; and

WHEREAS, Dr. Cole arrived on the legislative scene as an advocate for people with speech, hearing, and learning disorders and chemical dependencies, but due to her extensive knowledge, experience, and natural powers of persuasion, she quickly emerged as a proponent for myriad causes that affect women and their families; and

WHEREAS, Appointed by former Governor Ann Richards to serve as the governor's director of health and human services policy, this esteemed woman was responsible for the oversight of 12 state agencies, including policy and program development, service delivery, funding, and interagency coordination; in that role, she aided the governor and the state legislature in such vital actions as setting appropriate funding levels and serving as a liaison with professional organizations and advocates throughout the state; and

WHEREAS, Recognizing the pervasive links between violence against women, poverty, substance and alcohol abuse, and mental illness, Dr. Cole turned her notable talents to these areas, and she represented Communities in Schools and the Texas Council on Family Violence; and

WHEREAS, Over the years, her passion for addressing the challenges facing low-income women and victims of domestic violence continued to grow, and she helped to form the National Training Center on Domestic and Sexual Violence in 1998, serving as both its associate director and public policy director; and

WHEREAS, Dr. Cole has authored numerous articles in scholarly publications, received honors from many state and national organizations, and was recently honored as a Distinguished Alumni by the college of communication at The University of Texas at Austin; and

WHEREAS, A woman whose smile and sense of humor is surpassed only by her visible commitment to her fellowman, Dr. Patricia Cole has garnered the respect and admiration of her colleagues, friends, and past and present members of the Texas Legislature; through her tireless efforts, she has raised awareness of important issues, especially those affecting the women of this state, and it is a privilege to honor her at this time; now, therefore, be it

RESOLVED, That the Senate of the 77th Texas Legislature hereby recognize May 25, 2001, as Pat Cole Appreciation Day in Texas and extend to her sincere best wishes for the future; and, be it further

RESOLVED, That an official copy of this resolution be prepared for Dr. Cole as an expression of highest regard by 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 Moncrief and by unanimous consent, the resolution was adopted by a rising vote of the Senate.

REMARKS ORDERED PRINTED

On motion of Senator Truan and by unanimous consent, the following remarks regarding **SR 1163** were ordered reduced to writing and printed in the *Senate Journal*:

Senator Moncrief: Thank you Mr. President and Members. Today is Pat Cole Appreciation Day in Texas. Pat is Associate Director of the National Training Center on Domestic and Sexual Violence in Austin. She's been a tireless advocate of battered women, particularly low-income women and their children. Prior to her current position, Pat was Director of Health and Human Services Policy from 1991 to 1994 during Governor Ann Richards' administration and since then she has served as legislative liaison for the Texas Council of Family Violence, has continued her advocacy in her current position. The two of us have worked on many an issue that is near and dear to both of us and it has been both, I must say, joy and pain. Members, now that I have all of the nice stuff out of the way, let me just say that when I say working with this woman has been filled with joy and pain, and I mean both, literally. There is nobody more direct, Mr. President, than Pat Cole. When Pat has a call to action, she expects you to have an equally strong call to action, and if you don't hear that call, she will cause you pain until you improve your hearing. She expects you to do what is right, and she will dog your heels until you have done just that. In fact, in some respects Pat and Chris Harris are soulmates. I wish he was here. If they can't convince you with gentle humor and kindly persuasion, they will simply pummel you into submission. And, Members, like our colleague, if Pat thinks she has a righteous cause, then heaven help you if you get in her way. With Pat today, Ann Mauzy, Patty Dillard, Carie Dillard, Joshua English, Ellen Richards, Clark Richards, Dan Richards, Suzanne Coleman, Mary Jane Leahy, Joene Grissom, and Rhonda Jerson, as well as the many friends that you can see, Members, standing in the gallery surrounding us. This woman is a Texas treasure, and I am extremely proud to call Pat Cole my friend and fellow warrior.

Senator Zaffirini: Thank you Mr. President. Mr. President and Members, it's my very great pleasure to join Senator Moncrief and many of you in singing the praises of this great Texan, Pat Cole. Pat Cole is actually a leader in the Texas Senate, because many times it is she who comes to us with her ideas for good legislation. We are also grateful for the many, many people who support us, but I truly believe that Pat Cole leads the way in many, many ways, and so often she has wonderful ideas about legislation, legislation that often is opposed, but she not only gives birth to the idea, she

also nurtures it. She makes sure that where there is controversy, it is resolved. She insists on finding solutions to a problem, and while there are many, many people who know how to say, no, we won't support that bill, Pat Cole is the kind of leader who will not take no for an answer. She develops the issue, she works with everyone who supports her, she works with everyone who opposes that issue until she finds that solution. Pat, it is my pleasure to call you a friend, and all of us who are Members of the Legislature, including the state Representatives who cross the hall to come over and join us in this tribute to you, appreciate your great leadership and your wonderful causes. Thank you for everything that you are.

Senator Lucio: Thank you Mr. President. I, too, rise to join my colleagues in recognition of this outstanding Texan. I'd like to read two short passages from my Bible. "And he said unto me, my grace is sufficient for thee: for my strength is made perfect in weakness. Most gladly therefore will I rather glory in my infirmities, that the power of Christ may rest upon me." That is II Corinthians, Chapter 12. Also, and I quote, "Just as the sufferings of Christ are ours in abundance, so also our comfort is abundant through Christ." (II Corinthians 1:5) In today's recognition, Members, of this beautiful godly lady, we are recognizing the fruit of her labor and tireless hours of work that Dr. Cole dedicated to her fellowman. God teaches us that he blesses those who give of themselves to others, and Pat has done it so well for so long. I pray that God blesses us with many Pat Coles in the future. *Vaya con Dios.*

Senator Truan: Thank you very much. I'd like to join my colleagues, Senator Moncrief and others, who have paid tribute already to Pat Cole. I've had the honor and pleasure of working with her during the years that I've been in the Legislature. I remember so well her close relationship with our departed friend, Oscar Mauzy, and I'm pleased to see Ann Mauzy here, his widow, also. There is no doubt that they are trailblazers and Pat Cole's name will stand very high among the people that have really lead the way in making sure we in this Legislature, we in these governing bodies of the House and the Senate and the other offices, that we understand the needs of people, particularly women. I want to tell you how much of a pleasure and an honor it has been for me to have worked with you all these years, and I look forward to continuing to do so. God bless.

Senator Barrientos: Mr. President and Members. I know Pat Cole. Pat Cole is my constituent. I'm a friend of Pat Cole. Over 25 years we worked together, and, Members, this gentle woman has helped thousands of our fellow Texans, especially those people who sometimes cannot help themselves, the disabled, the poor. Senator Moncrief, you talk about dogged dedication, perseverance, I know Pat Cole, because she helped me get elected. I will only say this and hope everybody remembers, for, you see, Pat Cole, no one can help everybody, but everybody can help someone. God bless you.

Senator Van de Putte: Mr. President and Members. I join with my colleagues today in honoring Pat Cole. I am amazed by your strength. The years that I have had the pleasure of working with you, before I was a legislator, in political campaigns and on causes, you seemed to draw that enthusiasm that you have, and that righteousness, and you draw everybody in. So, I want to say thanks as a legislator, but much more than that, I want to say thanks to all the women whose lives you have touched. You have shown us that you can do it all. You have made it possible to show the young women,

and I know so many of them are here, that they have the opportunity to become engaged in the process, that they can make a difference in their communities, and that they can make a difference in state government and in public policy. You have that wonderful ability, and I know you will continue to nurture these young women into leadership positions. As one of the young women at the time who you helped nurture through, and particularly when some of those young women, and I don't know if any of the young guys are there, but when those young women are problem children like myself, you take us under the wing, and you showed us, you've got to pick your fights, and you've got to know what hill you want to die on, and you've got to know where you want to make your stand. And for teaching all the young women that they can do it, that they know when there is a time to compromise, and when there is a time to charge forward. You've always had that wisdom, and you helped hundreds and hundreds of young women. So, Pat Cole, thank you from one of the problem children that you helped garner through on the right track. Thank you from the women. God bless you and we love you.

Senator Bivins: Thank you Mr. Chairman and Members. I, too, would like to rise in support of this resolution. Pat probably doesn't remember this, but I was a sophomore state Senator when Governor Richards was elected, and I had been used to dealing with these very serious people in Governor Clements' office, and I had a great awakening. These Richards guys laughed a lot, they had fun, and Pat was certainly one of those. While we were always able to laugh, even if we were on opposite sides of issues, we laughed and had a great personal relationship. I think that is the way that this building works at its very best. You were part of that, Pat, and I just wanted to say, I appreciate it, even if I sit on this side of the aisle. Thank you very much.

Senator Moncrief: Mr. President, before I move adoption, I think you've heard a cross section of the feelings of this body. This is a unique woman who has given much, and as a result, we are all better for it.

SENATE BILL 314 WITH HOUSE AMENDMENTS

Senator Sibley called **SB 314** 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 314** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the continuation and functions of the Texas Department of Banking and the regulation of certain financial institutions and businesses; providing an administrative penalty.

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

SECTION 1. Section 12.107, Finance Code, is amended to read as follows:

Sec. 12.107. 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 that:

(1) is primarily designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests; and

(2) includes business and professional competitors located in this state among its members.

(b) A person may not be a department employee if:

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

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in an industry regulated by the department.

(c) A person may not act as the general counsel to the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department [An officer or employee of the department may not be:

(1) an officer, employee, or paid consultant of a trade association in an industry regulated by the department; or

(2) related within the second degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to a person who is an officer, employee, or paid consultant of a trade association in an industry regulated by the department].

(d) [(b)] Before the 11th day after the date on which an employee begins employment with the department, the employee shall read the conflict-of-interest statutes applicable to employees of the department and sign a notarized affidavit stating that the employee has read those statutes.

SECTION 2. Section 12.108, Finance Code, is amended to read as follows:

Sec. 12.108. CONSUMER INFORMATION AND COMPLAINTS. (a) The banking commissioner shall:

(1) prepare information of consumer interest describing:

(A) the regulatory functions of the department; and

(B) the department's procedures by which consumer complaints are filed with and resolved by the department; and

(2) make the information available to the public and appropriate state agencies.

(b) The department shall maintain a file on each written complaint filed with the department. The file must include:

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

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

(3) the subject matter of the complaint;

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

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

(6) an explanation of the reason the file was closed.

(c) The department shall provide to the person filing the complaint and to each person who is a subject of the complaint a written summary of the department's policies and procedures relating to complaint investigation and resolution [banking commissioner shall keep an information file about each complaint filed with the commissioner relating to an entity regulated by the department.

[(c) At least quarterly until final disposition of any written complaint filed with the banking commissioner relating to an entity regulated by the department, the commissioner shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation].

SECTION 3. Section 12.109, Finance Code, is amended to read as follows:

Sec. 12.109. SUNSET PROVISION. The office of banking commissioner is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2013 [2004].

SECTION 4. Subchapter B, Chapter 12, Finance Code, is amended by adding Sections 12.111, 12.112, and 12.113 to read as follows:

Sec. 12.111. STANDARDS OF CONDUCT. The banking commissioner or the banking commissioner's designee shall provide to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 12.112. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The banking commissioner or the banking commissioner'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 department to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

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

(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. 12.113. EMPLOYEE INCENTIVE PROGRAM. The banking commissioner or the banking commissioner's designee shall provide to agency employees information and training on the benefits and methods of participation in the state employee incentive program.

SECTION 5. Section 154.109, Finance Code, is amended by adding Subsection (d) to read as follows:

(d) The commissioner may place on probation a permit holder whose permit is suspended. If a permit suspension is probated, the commissioner may require the permit holder:

(1) to report regularly to the department on matters that are the basis of the probation; or

(2) to limit its activities as prescribed by the commissioner.

SECTION 6. Section 154.151, Finance Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) A sales contract for prepaid funeral benefits, whether in English or Spanish, must be written in plain language designed to be easily understood by the average consumer. The contract must be printed in an easily readable font and type size. The department shall provide model contracts complying with this subsection and shall enforce this subsection.

(e) The Finance Commission of Texas by rule shall establish a standard disclosure that must be included in each contract to inform purchasers of the goods and services that will be provided or excluded under the contract and the circumstances under which the contract may be modified after death of the beneficiary.

SECTION 7. Subsection (d), Section 154.155, Finance Code, is amended to read as follows:

(d) The purchaser is entitled to receive ~~[only]~~ the actual amount paid by the purchaser and half of all earnings attributable to that money, less the amount permitted to be retained as provided by Section 154.252, except as provided by Subsection (e) and by Sections 154.205 and 154.254.

SECTION 8. Section 154.252, Finance Code, is amended to read as follows:

Sec. 154.252. RETENTION OF MONEY FOR EXPENSES. ~~The [To cover its selling expenses, service costs, and general overhead, the]~~ seller of a trust-funded prepaid funeral benefits contract may retain for the seller's use and benefit an amount not to exceed one-half of all money collected or paid until the seller has received an amount equal to 10 percent of the total amount the purchaser agreed to pay under the contract.

SECTION 9. Section 154.406, Finance Code, is amended to read as follows:

Sec. 154.406. ADMINISTRATIVE PENALTY. (a) After notice and opportunity for hearing, the commissioner may impose an administrative penalty on a person who:

(1) violates this chapter or a final order of the commissioner or rule of the Finance Commission of Texas ~~[commissioner or department;]~~ and

~~[(2)]~~ does not correct the violation before the 31st day after the date the person receives written notice of the violation from the department; or

(2) engages in a pattern of violations, as determined by the commissioner.

(b) The amount of the penalty for each violation may not exceed \$1,000 for each day the violation occurs.

(c) In determining the amount of the penalty, the commissioner shall consider the seriousness of the violation, the person's history of violations, and the person's good faith in attempting to comply with this chapter.

(d) The imposition of a penalty under this section is subject to judicial review as a contested case under Chapter 2001, Government Code.

(e) The commissioner may collect the penalty in the same manner that a money judgment is enforced in district court.

SECTION 10. Subchapter I, Chapter 154, Finance Code, is amended by adding Section 154.4061 to read as follows:

Sec. 154.4061. PATTERN OF WILFUL DISREGARD. (a) If, after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas establishes a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission, the trier of fact shall recommend to the commissioner that the maximum administrative penalty permitted under Section 154.406 be imposed on the person committing the violation or that the commissioner cancel or not renew the person's permit under this chapter.

(b) For the purposes of this section, violations corrected as provided by Section 154.406 may be included in determining whether a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission exists.

SECTION 11. Subchapter A, Chapter 712, Health and Safety Code, is amended by adding Section 712.008 to read as follows:

Sec. 712.008. RULES. The Finance Commission of Texas may adopt rules to enforce and administer this chapter, including rules establishing fees to defray the costs of enforcing and administering this chapter.

SECTION 12. Section 712.042, Health and Safety Code, is amended to read as follows:

Sec. 712.042. FEES. On filing a statement of funds under Section 712.041, a corporation shall pay the commissioner a reasonable and necessary fee set by rule adopted by the Finance Commission of Texas under Section 712.008 [~~annually by the commissioner~~] to defray the cost of administering this chapter.

SECTION 13. Section 712.044, Health and Safety Code, is amended to read as follows:

Sec. 712.044. EXAMINATION OF [~~FUND~~] RECORDS; EXAMINATION FEES AND EXPENSES. (a) The commissioner may examine the books and records of a corporation relating to its fund, including deposits to or withdrawals from the fund, income of the fund, and uses and expenditures of that income, [shall be examined] annually or more [as] often as necessary to protect the interest of plot owners. In addition, the commissioner may examine consumer complaint files relating to the fund or to discharge of the corporation's perpetual care responsibilities, minutes of the corporation's board of directors, cemetery dedication statements and plat maps, and lawn crypt construction contracts and specifications [by the commissioner. The examination shall cover the period of time from the date of the last examination of the corporation's books and records relating to its fund].

(b) A corporation that is examined under this section shall make the specified [its] books and records [relating to its fund] available for examination by the banking department upon reasonable notice to the corporation and shall pay to the commissioner for the examination a reasonable and necessary fee set by rules adopted by the Finance Commission of Texas under Section 712.008 [~~annually by the commissioner~~] to defray the cost of administering this chapter.

SECTION 14. Subsections (a), (b), and (c), Section 712.0441, Health and Safety Code, are amended to read as follows:

(a) After notice and opportunity for hearing, the commissioner may impose an administrative penalty on a person who:

(1) violates this chapter or a final order of the commissioner or rule of the Finance Commission of Texas and does not correct the violation before the 31st day after the date the person receives written notice of the violation from the banking department; or

(2) engages in a pattern of violations, as determined by the commissioner.

(b) The amount of the penalty for each violation may not exceed \$1,000 for each day the violation occurs.

(c) In determining the amount of the penalty, the commissioner shall consider the seriousness of the violation, the person's history of violations, and the person's good faith in attempting to comply with this chapter. The imposition of a penalty under this section is subject to judicial review as a contested case under Chapter 2001, Government Code. The commissioner may collect the penalty in the same manner that a money judgment is enforced in district court. [A corporation shall be subject to a civil penalty upon the occurrence of any of the following violations:

[(1) the corporation does not make a deposit in its fund as required by Section 712.028;

~~[(2) the corporation does not file a statement of funds as required by Section 712.041; or~~

~~[(3) the corporation does not pay the filing fee as required by Section 712.042.~~

~~[(b) The trustee of a fund shall be subject to a civil penalty upon the occurrence of either of the following violations:~~

~~[(1) the trustee does not file a report required by the commissioner under Section 712.043 within 30 days after the date of the commissioner's request; or~~

~~[(2) the fund does not comply with this chapter.~~

~~[(c) The civil penalty that may be imposed under Subsection (a) or (b) shall not exceed \$250 per violation for each day that the violation persists, provided, that the aggregate civil penalty for all violations shall not exceed \$500 per day. A corporation or trustee shall have no civil penalty liability if within 30 days after receiving written notice from the commissioner of the violation the corporation or trustee corrects such violation by performing the required duty or act. Any such civil penalty may be imposed by the commissioner after notice and opportunity for hearing in accordance with the procedures for a contested case hearing under the Administrative Procedure and Texas Register Act. In determining the amount of the penalty, the commissioner shall consider the seriousness of the violation and the good faith of the corporation or trustee in its attempts to achieve compliance. The amount of such penalty may be collected by the commissioner in the same manner that money judgments are enforced in the district courts of this state.]~~

SECTION 15. Subchapter C, Chapter 712, Health and Safety Code, is amended by adding Section 712.0442 to read as follows:

Sec. 712.0442. PATTERN OF WILFUL DISREGARD. (a) If, after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas establishes a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission, the trier of fact shall recommend to the commissioner that the maximum administrative penalty permitted under Section 712.0441 be imposed on the person committing the violation or that the commissioner cancel or not renew the person's permit under Chapter 154, Finance Code, if the person holds such a permit.

(b) For the purposes of this section, violations corrected as provided by Section 712.0441 may be included in determining whether a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission exists.

SECTION 16. Article 21.07-1, Insurance Code, is amended by adding Section 5B to read as follows:

Sec. 5B. INSURANCE FUNDED PREPAID FUNERAL CONTRACT SALES. Notwithstanding any other provision of this code, a funeral home employee or other person who has a funeral prearrangement life insurance agent license or a license to sell life insurance not exceeding \$15,000 and who writes only life insurance policies and fixed annuity contracts to secure the delivery of funeral services and merchandise under prepaid funeral contracts regulated by the Texas Department of Banking under Chapter 154, Finance Code, is not required to comply with any continuing education requirements in order to maintain such a license, except that the appointing insurance company must educate its appointed agents about any new products sold by the licensed agent to fund prepaid funeral contracts. Such a licensee may be appointed by more than one insurance company.

SECTION 17. (a) The changes in law made by this Act to Subsection (d), Section 154.155, Finance Code, do not apply to cancellation of a contract that was executed and binding on all parties before September 1, 2001. Such a cancellation is governed by the law in effect when the contract was executed, and the former law is continued in effect for that purpose.

(b) The changes in law made by this Act to Section 154.252, Finance Code, do not apply to a contract that was executed and binding on all parties before September 1, 2001. Such a contract is governed by the law in effect when the contract was executed, and the former law is continued in effect for that purpose.

SECTION 18. This Act takes effect September 1, 2001.

Floor Amendment No. 1

Amend **CSSB 314** by adding the following appropriately numbered SECTIONS to the bill and renumbering SECTIONS appropriately:

SECTION _____. Subchapter D, Chapter 154, Finance Code, is amended by adding Section 154.1551 to read as follows:

Sec. 154.1551. MODIFICATION AT TIME OF FUNERAL. (a) The funeral merchandise and services to be provided by the seller under a fully paid prepaid funeral benefits contract may be modified after the death of the beneficiary if the modification complies with Subsection (b) or is otherwise agreed to in a writing signed by the seller and the person charged with the disposition of the beneficiary's remains by Section 711.002(a), Health and Safety Code, except that:

(1) if the purchaser of the contract is also the beneficiary:

(A) the contracted funeral merchandise and services may not be modified if the contract contains a clause that prohibits modification; and

(B) a modification may not change the type of disposition specified by the purchaser in the contract, whether by burial, cremation, or another alternative by which the purchaser's remains attain their final resting place, as provided by Section 711.002(g), Health and Safety Code; and

(2) the value attributed to any contracted funeral merchandise or service that is surrendered or exchanged in a modification must be computed on a comparable time-price basis with the price charged for substituted funeral merchandise or service provided as part of the modification.

(b) The person charged with the disposition of the beneficiary's remains by Section 711.002(a), Health and Safety Code, may make reasonable modifications to the funeral merchandise and services provided under a prepaid funeral contract at the time the funeral is performed, not to exceed 10 percent of the original purchase price of the contract. This subsection does not require the seller to:

(1) refund a portion of the funds attributable to the contract if the seller grants credit for surrender or exchange as provided by Subsection (a)(2);

(2) provide substituted or additional funeral merchandise or services in excess of credits granted under Subsection (a)(2) unless the seller receives additional compensation at current prices; or

(3) apply a portion of the funds attributable to the contract or credits granted under Subsection (a)(2) to another contract or funeral.

(c) The person charged with the disposition of the beneficiary's remains by Section 711.002(a), Health and Safety Code, may not modify a prepaid funeral benefits contract that has not been fully paid at the time of death of the beneficiary except as agreed to in a writing signed by the seller and the person.

SECTION _____. Section 154.156, Finance Code, is amended to read as follows:

Sec. 154.156. WAIVER OF RIGHT OF CANCELLATION. (a) The purchaser of a prepaid funeral benefits contract may irrevocably waive the purchaser's right to cancel the contract under Section 154.155. The waiver must [may be a part of the contract or] be in a separate writing signed by the purchaser and the seller not earlier than the 15th day after the date of the purchase of the contract. The form of the waiver must comply with the requirements for the form of a sales contract under Section 154.151.

(b) A waiver made under this section does not affect:

(1) a right the purchaser has under the contract to change the beneficiary of the contract;

(2) the purchaser's right to cancel the contract under Section 154.413; ~~or~~

(3) an abandonment of the money paid by the purchaser under the contract as provided by Subchapter G; or

(4) a modification to the contract as provided by Section 154.1551.

Floor Amendment No. 2

Amend **CSSB 314** by adding the following SECTIONS, appropriately numbered, and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter A, Chapter 712, Health and Safety Code, is amended by adding Section 712.009 to read as follows:

Sec. 712.009. LIMITATIONS ON BURIALS; DAMAGES. (a) The Finance Commission of Texas shall adopt rules to administer and enforce this section.

(b) An individual, corporation, partnership, firm, trust, or association that operates or owns a perpetual care cemetery may not inter the remains of an individual who may have caused the death of another person if:

(1) the victim is interred in that cemetery; and

(2) the person having the right to control the disposition of the victim's remains under Section 711.002(a) gives written notice to the cemetery requesting that the individual not be interred in that cemetery if:

(A) the individual was convicted under Section 19.02, 19.03, 19.05, or 49.08, Penal Code, for causing the death of the victim, or convicted under a similar statute of another state; or

(B) the individual was identified as causing the death of the victim, in violation of a provision described by Paragraph (A), by the medical examiner or law enforcement agency having jurisdiction over the offense, and the individual dies before being convicted of the offense.

(c) An individual, corporation, partnership, firm, trust, or association that violates Subsection (b) is liable to the person having the right to control the disposition of the victim's remains under Section 711.002(a) for:

(1) any actual damages incurred;

(2) punitive damages not to exceed \$10,000; and

(3) reasonable attorney's fees and court costs incurred in an effort to enforce compliance with Subsection (b).

(d) Damages under Subsection (c) or a civil penalty under Section 712.0441 may not be assessed if the individual, corporation, partnership, firm, trust, or association that operates the cemetery proves by a preponderance of the evidence that:

(1) the cemetery is the only cemetery serving the municipality or county in which the victim and individual causing the victim's death lived; and

(2) the bodies of the victim and individual causing the victim's death were placed as far apart as possible in, or in different parts of, the cemetery.

(e) An individual, corporation, partnership, firm, trust, or association operating or owning a perpetual care cemetery and barred from interring remains of an individual under this section may not be held liable for damages by a person having the right to control the disposition of the individual's remains under Section 711.002(a), including damages for failure to provide for interment under a contract executed before the delivery of the written notice under Subsection (b)(2).

(f) A notice under Subsection (b)(2) expires seven years after the date the notice is delivered. A new notice may be delivered on the expiration of each previous notice.

SECTION 2. Section 712.0441(a), Health and Safety Code, is amended to read as follows:

(a) A corporation shall be subject to a civil penalty upon the occurrence of any of the following violations:

(1) the corporation does not make a deposit in its fund as required by Section 712.028;

(2) the corporation does not file a statement of funds as required by Section 712.041; ~~[or]~~

(3) the corporation does not pay the filing fee as required by Section 712.042; or

(4) the corporation violates Section 712.009.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 314**, on third reading, as follows:

(1) In Section 712.009, Health and Safety Code, as added by the second reading Allen amendment, in Subsection (d), strike "or a civil penalty under Section 712.0441".

(2) Strike the section of the bill that amends Section 712.0441(a), Health and Safety Code, as added by the second reading Allen amendment (adding a reference to Section 712.009, Health and Safety Code).

Floor Amendment No. 2 on Third Reading

Amend **CSSB 314**, on third reading, by adding the following appropriately numbered SECTION of the bill and renumbering SECTIONS appropriately:

SECTION _____. Subchapter A, Chapter 4, Business & Commerce Code, is amended by adding Section 4.112 to read as follows:

Sec. 4.112. PAYMENT OF CHECK AT PAR. (a) Except as otherwise provided by Chapter 3 or this chapter, a payor bank shall pay a check drawn on it against an account with a sufficient balance at par without regard to whether the payee holds an account at the bank.

(b) This section does not prohibit a bank from requiring commercially reasonable verification of the payee's identity before settlement of the check.

(c) In addition to any remedy provided by law, the banking commissioner of Texas, in coordination with the Finance Commission of Texas, shall ensure that payor banks comply with the requirements of this section.

The amendments were read.

On motion of Senator Sibley, the Senate concurred in the House amendments to **SB 314** by a viva voce vote.

**SENATE RULE 11.13 SUSPENDED
(Consideration of Bills in Committee)**

On motion of Senator Bivins and by unanimous consent, Senate Rule 11.13 was suspended to grant the conference committee on **HB 3343** permission to meet while the Senate was meeting today.

HOUSE CONCURRENT RESOLUTION 304

The President laid before the Senate the following resolution:

HCR 304, Honoring Colby Donaldson of Dallas on his award.

DUNCAN

The resolution was read.

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

GUESTS PRESENTED

Senator Duncan was recognized and introduced to the Senate Colby Donaldson of Dallas from the television series *Survivor II: The Australian Outback*, accompanied by his family.

The Senate welcomed Mr. Donaldson and his family.

(Senator Brown in Chair)

SENATE RESOLUTION 1086

Senator Gallegos offered the following resolution:

WHEREAS, The Senate of the State of Texas is proud to recognize the 114 fourth grade and 90 fifth grade students from Mario M. Gallegos, Sr., Elementary School in Houston, Texas, who are visiting the State Capitol on May 24, 2001; and

WHEREAS, The distinguished group of students are traveling to Austin to learn firsthand about our state government during the legislative session and to meet with their state senator and state representatives; and

WHEREAS, By exemplifying good citizenship and demonstrating their preparedness for the Texas Assessment of Academic Skills test, these dedicated young people earned the right to make this highly informative trip; and

WHEREAS, The students of today are the citizens and leaders of tomorrow's society who will carry on with the responsibilities of our democratic heritage; and

WHEREAS, It is a special privilege for the Texas Senate to recognize these young people who have demonstrated an interest in being good citizens and in achieving their highest educational potential; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby commend the students of Mario M. Gallegos, Sr., Elementary School and extend to them best wishes for a most enjoyable visit to the State Capitol; and, be it further

RESOLVED, That a copy of this Resolution be prepared for them as a token 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.

GUESTS PRESENTED

Senator Gallegos was recognized and introduced to the Senate students from Mario M. Gallegos, Sr., Elementary School in Houston, accompanied by their teachers, parents, and principal.

The Senate welcomed its guests.

RECESS

On motion of Senator Truan, the Senate at 11:55 a.m. recessed until 1:30 p.m. today.

AFTER RECESS

The Senate met at 1:30 p.m. and was called to order by Senator Brown.

SENATE BILL 108 WITH HOUSE AMENDMENTS

Senator Lucio called **SB 108** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 108** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the first day of instruction of a school year for public school students.

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

SECTION 1. Subchapter C, Chapter 25, Education Code, is amended by adding Section 25.0811 to read as follows:

Sec. 25.0811. FIRST DAY OF INSTRUCTION. (a) A school district may not begin instruction for students for a school year earlier than August 21.

(b) If a school district intends to apply under Section 7.056 for a waiver of the prohibition prescribed by Subsection (a):

(1) at least 60 days before the date the district submits the application for the waiver, the district must publish notice in a newspaper having general circulation in the district:

(A) stating that the district intends to apply for a waiver of the prohibition concerning the date of the first day of instruction for students; and

(B) specifying the date on which the district intends to begin instruction for students; and

(2) hold a public hearing concerning the date of the first day of instruction for students.

(c) The application for a waiver of the prohibition prescribed by Subsection (a) must include a summary of the opinions expressed at the public hearing held under Subsection (b)(2), including any consensus of opinion expressed concerning the date of the first day of instruction for students.

SECTION 2. Section 25.084(a), Education Code, is amended to read as follows:

(a) A school district may operate its schools year-round on either a single-track or a multitrack calendar. If a school district adopts a year-round system, the district may modify:

(1) the number of contract days of employees and the number of days of operation, including any time required for staff development, planning and preparation, and continuing education, otherwise required by law;

(2) testing dates, data reporting, and related matters; ~~and~~

(3) the date of the first day of instruction of the school year under Section 25.0811 for a school that was operating year-round for the 2000-2001 school year; and

(4) a student's eligibility to participate in extracurricular activities when the student's calendar track is not in session.

SECTION 3. This Act applies beginning with the 2002-2003 school year.

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

Floor Amendment No. 1

Amend **CSSB 108** (house committee printing) as follows:

(1) SECTION 1, Section 25.0811, Education Code, subsection (a) (committee printing page 1, line 9), strike "earlier than August 21" and substitute "before the week in which August 21 falls."

(2) SECTION 1, Section 25.0811, Education Code, strike subsections (b) and (c) (committee printing, page 1, line 10, through page 2, line 2) and substitute the following:

"(b) For purposes of this section, Sunday is considered the first day of the week.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 108** on third reading as follows:

(1) In SECTION 1 of the bill, in added Subsection (a), Section 25.0811, Education Code, after the period, insert "For purposes of this subsection, Sunday is considered the first day of the week.".

(2) In SECTION 1 of the bill, strike added Subsection (b), Section 25.0811, Education Code, and substitute the following:

(b) If a school district intends to apply under Section 7.056 for a waiver of the prohibition prescribed by Subsection (a), the district must:

(1) at least 60 days before the date the district submits the application for the waiver, publish notice in a newspaper having general circulation in the district:

(A) stating that the district intends to apply for a waiver of the prohibition concerning the date of the first day of instruction for students; and

(B) specifying the date in which the district intends to begin instruction for students; and

(2) hold a public hearing concerning the date of the first day of instruction for students.

(c) The application for a waiver of the prohibition prescribed by Subsection (a) must include a summary of the opinions expressed at the public hearing held under Subsection (b)(2), including any consensus of opinion expressed concerning the date of the first day of instruction for students.

The amendments were read.

On motion of Senator Lucio, the Senate concurred in the House amendments to **SB 108** by a viva voce vote.

MESSAGE FROM THE HOUSE**HOUSE CHAMBER**

Austin, Texas

May 24, 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 308, Honoring Wayne Scott of Huntsville on his impending retirement as executive director of the Texas Department of Criminal Justice.

HCR 310, Congratulating L. C. Stout on his retirement as superintendent of the Prairiland Independent School District.

HCR 311, Honoring W. Carl McEachern on his retirement as superintendent of the Bonham Independent School District.

HCR 312, Honoring H. L. Milton on his retirement as superintendent of the Honey Grove Independent School District.

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

SENATE BILL 484 WITH HOUSE AMENDMENTS

Senator Duncan called **SB 484** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 484** as follows and renumber sections accordingly:

SECTION 4. Section 5, Article 9102, Subsection (p), Revised Statutes, is amended to read as follows:

(p) Notwithstanding other provisions of this article, the commission shall require complete compliance with the standards and specifications prescribed or referenced by Subsection (o) of this section. The department and the General Services Commission shall ensure that all buildings and facilities leased, with an annual lease expense in excess of \$12,000, built by or for the state to which those standards apply comply with those standards. Notwithstanding other provisions of this article, the department shall perform an on-site inspection of all buildings and facilities to be leased by the state, with and annual lease expense in excess of \$12,000, before the building or facility is occupied by the state for compliance with all accessibility standards and specifications adopted under this article. The leasing agency or the

General Services Commission, as applicable, shall cancel the lease unless the lessor brings into compliance with all accessibility standards and specifications adopted under this article. The leasing agency or the General Services Commission, as applicable, shall cancel the lease unless the lessor brings into compliance any condition that the inspection finds not to be in compliance with all applicable standards and specifications not later than:

(1) the 60th day after the date the department delivers the results of the inspection to the lessor or the lessor's agent; or

(2) a later date established by the commission if circumstances justify a later date.

Floor Amendment No. 2

Amend **SB 484** as follows:

(1) On page 1, add the following new Section 1 and renumber the subsequent sections accordingly:

SECTION 1. Section 2, Article 9102, Subsection (c) and (d), Revised Statutes, are amended to read as follows:

(c) The commission may waive or modify accessibility standards adopted under this article when:

(1) the application of the standards is considered by the commission to be irrelevant to the nature, use, or function of a building or facility covered by this article; or

(2) the owner of a building or facility that is the subject of a request for a waiver or modification of a standard under this subsection, or the owner's designated agent, presents proof to the commission that compliance with the particular standard is ~~impracticable~~ impractical.

(d) An owner of a building described by Subsection (a)(3) of this section or of building or facility leased or rented for use by the state through the use of federal funds, or the owner's designated agent, must present to the commission the proof required by Subsection (c)(2) of this section ~~before the date the owner:~~

~~(1) submits a bid proposal in relation to the award of a contract for the lease or rental of the building or facility; or~~

~~(2) is awarded the contract for the lease or rental of the building or facility if the state does not advertise for bids.~~

Floor Amendment No. 3

Amend **SB 484**, in SECTION 1 of the bill, in amended Section 5, Article 9102, Revised Statutes (House Committee Printing page 1, lines 10-15) by striking amended Subsection (d) of that section and substituting the following:

(d) The commission may contract with other state agencies and ~~;~~ political subdivisions ~~[-, nonprofit organizations, and private independent contractors]~~ to perform the commission's review and inspection functions. A person who holds a certificate of registration issued under Section 5A of this article may perform review functions of the commission, inspection functions of the commission, or both review and inspection functions as provided by the certificate [for facilities that are not leased by the state or a political subdivision and may terminate those contracts for cause].

Floor Amendment No. 1 on Third Reading

Amend **SB 484**, on third reading, by striking Subsection (p), Section 5, Article 9102, Revised Statutes, as amended on second reading by Amendment No. 1 by Pitts, and substituting the following:

(q) ~~(p)~~ Notwithstanding other provisions of this article, the commission shall require complete compliance with the standards and specifications prescribed or referenced by Subsection (p) ~~(q)~~ of this section. The department and the General Services Commission shall ensure that all buildings and facilities leased, with an annual lease expense in excess of \$12,000, or built by or for the state to which those standards apply comply with those standards. The ~~[Notwithstanding other provisions of this article, the]~~ department, an entity with whom the commission contracts under Subsection (d) of this section, or a person who holds a certificate of registration issued under Section 5A of this article shall perform an on-site inspection of each building or facility ~~[all buildings and facilities to be]~~ leased by the state, with an annual lease expense in excess of \$12,000, before the building or facility is occupied in whole or in part by the state for compliance with all accessibility standards and specifications adopted under this article. The leasing agency or the General Services Commission, as applicable, shall cancel the lease unless the lessor brings into compliance any condition that the inspection finds not to be in compliance with all applicable standards and specifications not later than:

(1) the 60th day after the date the department, the entity with whom the commission contracts under Subsection (d) of this section, or the person who holds a certificate of registration issued under Section 5A of this article delivers the results of the inspection to the lessor or the lessor's agent; or

(2) a later date established by the commission if circumstances justify a later date.

Floor Amendment No. 2 on Third Reading

Amend **SB 484** on third reading as follows:

(1) In SECTION 1 of the bill, in the introductory language, between "(d)," and "(n)" (house committee printing page 1, line 8), insert "(k)."

(2) In SECTION 1 of the bill, in amended Section 5, Article 9102, Revised Statutes, between Subsections (d) and (n) (house committee printing page 1, between lines 15 and 16), insert the following:

(k) Plans and specifications that are subject to Subsection (j) of this section ~~[related to the building or facility]~~ shall be submitted to the department by the architect, interior designer, landscape architect, or engineer who has overall responsibility for the design of the constructed or reconstructed building or facility. The architect, interior designer, landscape architect, or engineer shall submit the plans and specifications to the department not later than the fifth day, not including Saturdays, Sundays, and legal holidays, after the date on which the architect, interior designer, landscape architect, or engineer, as appropriate, issues the plans or specifications. If plans and specifications are issued on more than one date, the architect, interior designer, landscape architect, or engineer shall submit the plans and specifications to the department not later than the fifth day, not including Saturdays, Sundays, and legal holidays, after each date the plans and specifications are issued. The owner of the building or facility may not allow an application to be filed with a local governmental entity for a building construction permit related

to the plans and specifications or allow construction, renovation, modification, or alteration of the building or facility to begin before the date the plans and specifications are submitted to the department [places the applicable professional seal on the plans and specifications. If there is no architect, interior designer, landscape architect, or engineer with that responsibility, the owner shall submit the plans and specifications to the department at least 30 days within the date the construction or renovation, modification, or alteration on the building or facility begins]. On application to a local governmental entity for a building construction permit related to the plans and specifications, the owner shall submit to the entity proof that the plans and specifications have been submitted to the department under this article. A public official of a political subdivision who is legally authorized to issue building construction permits may not accept an application for a building construction permit for a building or facility subject to Subsection (j) of this section unless the official verifies that the building or facility has been registered with the department as provided by rule.

The amendments were read.

Senator Duncan moved to concur in the House amendments to **SB 484**.

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

Present-not voting: Mr. President.

SENATE BILL 82 WITH HOUSE AMENDMENT

Senator Madla called **SB 82** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment No. 1

Amend **SB 82** (senate engrossment) by striking lines 8 through 12 on page 1 (in amended Section 130.008(a), Education Code) and substituting the following:

(a) Under an agreement with a school district or, in the case of a private high school, with the organization or other person that operates the high school, a public junior college may offer a course in which a student attending a high school operated in this state by the school district, organization, or other person may enroll and for which the student may simultaneously receive both:

The amendment was read.

On motion of Senator Madla, the Senate concurred in the House amendment to **SB 82** by a viva voce vote.

SENATE BILL 393 WITH HOUSE AMENDMENTS

Senator Carona called **SB 393** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 393** at the end of Section 6(a) (on page 18, line 10), between "time to time" and the period by inserting the following:

, and specifically does not authorize the electronic delivery of any notice of the type described by Section 103(b), Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7003), as amended from time to time, including:

(1) any notice of:

(A) the cancellation or termination of utility services (including water, heat, and power);

(B) default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual;

(C) the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities); or

(D) recall of a product, or material failure of a product, that risks endangering health or safety; or

(2) any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

Floor Amendment No. 2

Amend **SB 393** by striking Subsections (b) and (c) of SECTION 6 of the bill (house committee report, page 18, line 11, through page 19, line 3), and substituting the following:

(b) If a federal regulatory agency under Section 104(d)(1), Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7004), exempts a specified category or type of record from the requirements relating to consent in Section 101(c), Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001), or if a federal regulatory agency under Section 103(c)(2), Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7003), removes an exception for a type of document from the application of Section 101, Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001), the regulatory agency of this state with jurisdiction over the subject matter with respect to which the federal action was taken may exempt the specified category or type of record from the application of Chapter 43, Business & Commerce Code, as added by this Act. An exemption under this subsection must be by rule or order of the state regulatory agency after notice and an opportunity for public comment.

Floor Amendment No. 4

Amend **SB 393** in section 1 of the bill, following added section 43.019, Business & Commerce Code, by inserting the following:

Sec. 43.020. APPLICABILITY OF PENAL CODE. "This chapter does not authorize any activity that is prohibited by the Penal Code."

The amendments were read.

On motion of Senator Carona, the Senate concurred in the House amendments to **SB 393** by a viva voce vote.

SENATE BILL 779 WITH HOUSE AMENDMENT

Senator Duncan called **SB 779** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 779** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the creation of an agricultural lien.

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

SECTION 1. Chapter 70, Property Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. AGRICULTURAL LIENS

Sec. 70.401. DEFINITIONS. In this subchapter:

(1) "Agricultural crop" means a plant product that is grown, produced, or harvested as a result of an agricultural producer's farm operation.

(2) "Agricultural producer" means a person who is engaged in the business of growing, producing, or harvesting an agricultural crop.

(3) "Buyer in ordinary course of business" has the meaning assigned by Section 1.201, Business & Commerce Code.

(4) "Contract purchaser" means a person who, before the planting of an agricultural crop, has agreed under a written contract to purchase the crop or otherwise pay the agricultural producer for growing, producing, or harvesting the agricultural crop. The term does not include a person who, as to the transaction in question, is licensed and bonded under Chapter 14, Agriculture Code, or the United States Warehouse Act (7 U.S.C. Section 241 et seq.).

Sec. 70.402. LIEN CREATED. (a) An agricultural producer who, under a written contract with a contract purchaser, is to receive consideration for selling an agricultural crop grown, produced, or harvested by the producer has a lien for the amount owed under the contract, or for the reasonable value of the crop on the date of transfer or delivery if there is no provision concerning the amount owed in the agreement.

(b) A lien created under this subchapter is on every agricultural crop, either in raw or processed form, that has been transferred or delivered by the agricultural producer and is in the possession of the contract purchaser. If the agricultural crop is commingled after the crop has been transferred or delivered, a lien created under this subchapter applies only to that portion of the contract purchaser's inventory in an amount that is equal to the amount of the crop transferred or delivered by the agricultural producer.

(c) For purposes of this subchapter, an agricultural crop or processed form of an agricultural crop deposited by a contract purchaser with a warehouse, whether or not a warehouse receipt is given as security, is considered to be in the possession of the contract purchaser and subject to the lien.

Sec. 70.403. WHEN LIEN ATTACHES. A lien created under this subchapter attaches to the agricultural crop on the date on which physical possession of the crop is delivered or transferred by the agricultural producer to the contract purchaser or the purchaser's agent, or if there is to be a series of deliveries to the contract purchaser or purchaser's agent, on the date of the last delivery of the agricultural crop to the contract purchaser or purchaser's agent.

Sec. 70.404. APPLICABILITY OF OTHER LAW. Chapter 9, Business & Commerce Code, including applicable filing and perfection requirements, applies to a lien created under this subchapter.

Sec. 70.405. DURATION OF LIEN. A lien created under this subchapter expires on the first anniversary of the date of attachment.

Sec. 70.406. EFFECT OF LIEN; RECOVERY. (a) A buyer in ordinary course of business of an agricultural crop, including a person who buys any portion of an agricultural crop from a contract purchaser, whether or not the agricultural crop has been commingled, takes the agricultural crop free of a lien created under this subchapter, and the lien created by this subchapter does not pass to any subsequent claimant of the agricultural crop.

(b) An unequal pro rata recovery between agricultural producers is not prohibited under this subchapter if the inequality results from a lien on accounts receivable.

Sec. 70.407. DISCHARGE OF LIEN. (a) A lien created under this subchapter is discharged when:

(1) the lienholder receives full payment for the agricultural crop; or

(2) payment is tendered by the contract purchaser and the lienholder, without coercion, defers payment.

(b) If payment for the agricultural crop is received in the form of a negotiable instrument, full payment is received when the negotiable instrument clears all financial institutions.

Sec. 70.408. JOINDER OF ACTIONS. Persons claiming a lien against the same agricultural crop under this subchapter may join in the same action, and if separate actions are commenced, the court may consolidate them.

Sec. 70.409. RECOVERY OF COSTS. An agricultural producer who prevails in an action brought to enforce a lien created under this subchapter is entitled to recover:

(1) reasonable and necessary attorney's fees and court costs; and

(2) interest on funds subject to the lien at the judgment interest rate as provided by Chapter 304, Finance Code.

Sec. 70.410. WAIVER OF CERTAIN RIGHTS PROHIBITED. An agricultural producer's agreement with a contract purchaser to waive the producer's right to seek a remedy provided by this subchapter is void.

SECTION 2. This Act takes effect September 1, 2001, and applies only to a contract to purchase agricultural crops entered into on or after the effective date of this Act. A contract to purchase agricultural crops entered into before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

The amendment was read.

On motion of Senator Duncan, the Senate concurred in the House amendment to **SB 779** by a viva voce vote.

SENATE BILL 965 WITH HOUSE AMENDMENT

Senator Jackson called **SB 965** 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 965** (House committee report) in SECTION 1 of the bill as follows:

(1) In Subsection (d), Section 16.01, Alcoholic Beverage Code, as amended by the bill (page 1, line 14), strike "or".

(2) In Subsection (d), Section 16.01, Alcoholic Beverage Code, as amended by the bill, between "international airport" and the period (page 1, line 20), insert the following:
"; or

(3) in a county that:

(A) has a population of 20,000 or more; and

(B) has within its boundaries all or part of three or more American viticultural areas, as recognized and defined by the United States Bureau of Alcohol, Tobacco and Firearms".

The amendment was read.

On motion of Senator Jackson, the Senate concurred in the House amendment to **SB 965** by a viva voce vote.

SENATE BILL 1467 WITH HOUSE AMENDMENT

Senator Moncrief called **SB 1467** 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 1467** (house committee printing) in SECTION 1 of the bill as follows:

(1) In Subsection (a), Section 2, Article 21.53S, Insurance Code, as added by the bill:

(A) After Subparagraph (iii), Paragraph (A) (page 1, between lines 24 and 25), insert the following:

(iv) a Lloyd's plan operating under Chapter 18 of this code;

(B) Insert "or" after the semicolon on page 2, line 16.

(C) Strike Subdivision (3) (page 2, lines 17-21).

(D) Renumber existing subparagraphs and subdivisions of the subsection appropriately.

(2) In Subdivision (2), Subsection (b), Section 2, Article 21.53S, Insurance Code, as added by the bill, between "a" and "plan" (page 3, line 10), insert "small employer".

(3) In Subsection (a), Section 3, Article 21.53S, Insurance Code, as added by the bill:

(A) Strike "diagnostic" in each place the word appears in that subsection and substitute "screening" (page 3, line 24, and page 4, line 1).

(B) Between "older" and "for" (page 3, line 26), insert "and at normal risk for developing colon cancer".

(4) Strike Subsection (b), Section 3, Article 21.53S, Insurance Code, as added by the bill (page 4, lines 3 through 8), and substitute the following:

(b) The minimum benefits provided under Subsection (a) of this section must:

(1) include:

(A) a fecal occult blood test performed annually; and

(B) a flexible sigmoidoscopy performed every five years; or

(2) include a colonoscopy performed every 10 years.

The amendment was read.

On motion of Senator Moncrief, the Senate concurred in the House amendment to **SB 1467** by a viva voce vote.

SENATE BILL 352 WITH HOUSE AMENDMENT

Senator Truan called **SB 352** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 352** (House committee printing) in SECTION 1 of the bill, at the end of amended Section 364.034, Health and Safety Code (page 2, between lines 20 and 21), by adding a new Subsection (e) to read as follows:

(e) This section does not apply to a person who provides the public or private entity, public agency, or county with written documentation that the person is receiving solid waste disposal services from another entity.

The amendment was read.

On motion of Senator Truan, the Senate concurred in the House amendment to **SB 352** by a viva voce vote.

GUESTS PRESENTED

Senator Truan was recognized and introduced to the Senate seventh-grade students from Tuloso-Midway Middle School in Corpus Christi, accompanied by their teachers and parents.

The Senate welcomed its guests.

SENATE BILL 350 WITH HOUSE AMENDMENT

Senator Truan called **SB 350** 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 350** in SECTION 1 of the bill (House committee report, page 2, lines 17-19), by striking proposed Section 44.043(f), Education Code, and substituting the following:

(f) A school district that requires a wage rate under this section shall specify in the call for bids for the contract and in the contract itself the wage rates required by the district.

The amendment was read.

On motion of Senator Truan, the Senate concurred in the House amendment to **SB 350** by a viva voce vote.

SENATE BILL 1797 WITH HOUSE AMENDMENT

Senator Carona called **SB 1797** 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 1797** by adding the following sections, appropriately numbered, and renumbering the sections of the bill accordingly:

SECTION 2. Section 2(4), The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), is amended to read as follows:

(4) "Practice of engineering," or "practice of professional engineering" shall mean any service or creative work, either public or private, the adequate performance of which requires engineering education, training and experience in the application of special knowledge or judgment of the mathematical, physical, or engineering sciences to such services or creative work.

To the extent the following services or types of creative work meet this definition, the term includes consultation, investigation, evaluation, analysis, planning, engineering for program management, providing an expert engineering opinion or testimony, engineering for testing or evaluating materials for construction and other engineering uses, and mapping; design, conceptual design, or conceptual design coordination of engineering works and systems; development or optimization of plans and specifications for engineering works and systems; planning the use or alteration of land and water or the design or analysis of works or systems for the use or alteration of land and water; ~~teaching advanced engineering subjects;~~ performing engineering surveys and studies; engineering for construction, alteration, or repair of real property; engineering for preparation of operating and maintenance manuals; and engineering for review of the construction or installation of engineered works to monitor compliance with drawings and specifications.

The activities included in the practice of engineering include services, designs, analyses, or other work performed for a public or private entity in connection with utilities, structures, buildings, machines, equipment, processes, systems, works, projects, and industrial or consumer products or equipment of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature and include other professional services necessary for the planning, progress, and completion of any engineering service.

In this subdivision:

(A) "Design coordination" includes the review and coordination of technical submissions prepared by others, including the work of other professionals working with or under the direction of an engineer with due professional regard for the abilities of all professional parties involved in a multidisciplinary effort.

(B) "Engineering surveys" includes all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of an engineered project, but does not include the surveying of real property and other activities regulated under the Professional Land Surveying Practices Act (Article 5282c, Vernon's Texas Civil Statutes).

SECTION _____. Section 12(c), The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) In considering the qualifications of applicants, ~~responsible charge of~~ engineering teaching may not be construed as active practice in ~~responsible charge of~~ engineering work. The mere execution, as a contractor, of work designed by a

professional engineer, or the supervision of the construction of such work as foreman or superintendent shall not be deemed to be active practice in engineering work.

SECTION _____. The change in law made by this Act to Section 12(c), The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), applies only to a person who begins the teaching of engineering on or after September 1, 2001. A person who has engaged in the teaching of engineering before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 1797**.

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

Present-not voting: Mr. President.

STATEMENT OF LEGISLATIVE INTENT

Senator Carona submitted the following statement of legislative intent for **SB 1797**:

The purpose of **SB 1797** is to provide exemption from the licensing requirements of The Texas Engineering Practice Act for faculty members at Texas public and private institutions of higher education who instruct students or perform research within the scope of their university employment. A significant number of faculty members in engineering schools are not engineers but teach content that is critical to students who will be this century's engineers. This exemption is an important step in achieving the state's goal of increasing the number of engineering graduates to address the critical shortage of personnel in Texas industry.

It is the intent of this legislation and of the Legislature that the State Board of Professional Engineers takes no actions and promulgates no rules that make it more difficult for faculty members who wish to become licensed to do so. We also intend for the Board to avoid other actions that inhibit universities' efforts to produce more engineers. This legislation and other related legislation passed by this Legislature does not imply that research conducted by engineering faculty cannot be counted as engineering experience for licensure purposes; nor does it mean that the Board has any authority to limit research performed by engineering faculty members.

CARONA

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1074 ADOPTED

Senator West called from the President's table the Conference Committee Report on **SB 1074**. The Conference Committee Report was filed with the Senate on Tuesday, May 22, 2001.

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

CONFERENCE COMMITTEE ON HOUSE BILL 3313

Senator Bernsen called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3313** 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 3313** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Bernsen, Chair; Staples, Gallegos, Van de Putte, and Bivins.

SENATE BILL 326 WITH HOUSE AMENDMENT

Senator Lucio called **SB 326** 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.

Committee Amendment No. 1

Amend **SB 326** as follows:

(1) In SECTION 1 of the bill, in added Subchapter CC, Government Code (page 4, between lines 19 and 20, senate engrossment), add a new Section 481.459 to read as follows:

Sec. 451.459. PERFORMANCE OF FUNCTIONS OF DEPARTMENT. If another state agency or office assumes the functions of the department, that agency or office shall perform the functions of the department under this subchapter.

(2) In SECTION 2 of the bill (page 4, line 21, senate engrossment), between "Development" and "shall" insert ", or other state agency or office that performs the functions of the Texas Department of Economic Development,".

The amendment was read.

Senator Lucio moved to concur in the House amendment to **SB 326**.

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

Present-not voting: Mr. President.

(Senator Madla in Chair)

(President in Chair)

SENATE BILL 5 WITH HOUSE AMENDMENTS

Senator Brown called **SB 5** 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 5** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the Texas emissions reduction plan; providing a penalty.

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

SECTION 1. (a) It is the intent of the legislature to give the Texas Natural Resource Conservation Commission additional tools to:

(1) assure that the air in this state is safe to breathe and meets minimum federal standards established under the federal Clean Air Act (42 U.S.C. Section 7407);

(2) develop multipollutant approaches to solving the state's environmental problems; and

(3) adequately fund research and development that will make the state a leader in new technologies that can solve the state's environmental problems while creating new business and industry in the state.

(b) Subtitle C, Title 5, Health and Safety Code, is amended by adding Chapters 386, 387, 388, and 389 to read as follows:

CHAPTER 386. TEXAS EMISSIONS REDUCTION PLAN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 386.001. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Texas Emissions Reduction Plan Advisory Board.

(2) "Affected county" includes:

(A) Bastrop County;

(B) Bexar County;

(C) Caldwell County;

(D) Comal County;

(E) Ellis County;

(F) Gregg County;

(G) Guadalupe County;

(H) Harrison County;

(I) Hays County;

(J) Johnson County;

(K) Kaufman County;

(L) Nueces County;

(M) Parker County;

(N) Rockwall County;

(O) Rusk County;

(P) San Patricio County;

(Q) Smith County;

(R) Travis County;

(S) Upshur County;

(T) Victoria County;

(U) Williamson County; and

(V) Wilson County.

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

(4) "Council" means the Texas Council on Environmental Technology.

(5) "Fund" means the Texas emissions reduction plan fund.

(6) "Incremental cost" means the cost of an applicant's project less a baseline cost that would otherwise be incurred by an applicant in the normal course of business. Incremental costs may include added lease or fuel costs as well as additional capital costs.

(7) "Laboratory" means the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System.

(8) "Nonattainment area" means an area so designated under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407), as amended.

(9) "Plan" means the Texas emissions reduction plan.

(10) "Site" means the total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person or persons under common control.

(11) "Utility commission" means the Public Utility Commission of Texas.

Sec. 386.002. EXPIRATION. This chapter expires August 31, 2008.

[Sections 386.003-386.050 reserved for expansion]

SUBCHAPTER B. TEXAS EMISSIONS REDUCTION PLAN

Sec. 386.051. TEXAS EMISSIONS REDUCTION PLAN. (a) The utility commission, the commission, the comptroller, and the council shall establish and administer the Texas emissions reduction plan in accordance with this chapter.

(b) Under the plan, the commission, the comptroller, and the council shall provide grants or other funding for:

(1) the diesel emissions reduction incentive program established under Subchapter C, including for infrastructure projects established under that subchapter;

(2) the motor vehicle purchase or lease incentive program established under Subchapter D; and

(3) the new technology research and development program established under Chapter 387.

(c) Under the plan, the utility commission shall provide grants or other funding for the energy efficiency grant program established under Subchapter E.

(d) Equipment purchased before September 1, 2001, is not eligible for a grant or other funding under the plan.

Sec. 386.052. COMMISSION DUTIES. (a) In administering the plan established under this chapter and in accordance with the requirements of this chapter, the commission shall:

(1) manage plan funds and oversee the plan;

(2) produce guidelines, protocols, and criteria for eligible projects;

(3) develop methodologies for evaluating project cost-effectiveness;

(4) prepare reports regarding the progress and effectiveness of the plan; and

(5) take all appropriate and necessary actions so that emissions reductions achieved through the plan are credited by the United States Environmental Protection Agency to the appropriate emissions reduction objectives in the state implementation plan.

(b) Appropriate commission objectives include:

(1) achieving maximum reductions in oxides of nitrogen to demonstrate compliance with the state implementation plan;

(2) preventing areas of the state from being in violation of national ambient air quality standards; and

(3) achieving cost-saving and multiple benefits by reducing emissions of other pollutants.

Sec. 386.053. GUIDELINES AND CRITERIA. (a) The commission shall adopt grant guidelines and criteria consistent with the requirements of this chapter.

(b) Guidelines must include protocols to calculate projected emissions reductions, project cost-effectiveness, and safeguards to ensure that funded projects generate emissions reductions not otherwise required by state or federal law.

(c) The commission shall make draft guidelines and criteria available to the public and the United States Environmental Protection Agency before the 45th day preceding the date of final adoption and shall hold at least one public meeting to consider public comments on the draft guidelines and criteria before final adoption.

(d) The commission may propose revisions to the guidelines and criteria adopted under this section as necessary to improve the ability of the plan to achieve its goals. Revisions may include, among other changes, adding additional pollutants or adjusting eligible program categories, as appropriate, to ensure that incentives established under this chapter achieve the maximum possible emissions reductions. The commission shall make a proposed revision available to the public before the 45th day preceding the date of final adoption of the revision and shall hold at least one public meeting to consider public comments on the proposed revision before final adoption.

(e) Because the legislature finds that the current state of air quality in the state jeopardizes the state's ability to meet federal air quality requirements, the commission and the comptroller may adopt emergency rules under Section 2001.034, Government Code, with abbreviated notice, to carry out any rulemaking necessary to implement this chapter.

(f) Except as provided by Subsection (e), the rulemaking requirements of Chapter 2001, Government Code, do not apply to the adoption or revision of guidelines and criteria under this section.

Sec. 386.054. MONITORING PROCEDURES. (a) The commission shall develop procedures for monitoring whether the emissions reductions projected for projects awarded grants under this chapter are actually achieved. Monitoring procedures may include project reviews and contract requirements that the grant recipient provide information annually about the project. If the commission requires an annual report, the report shall contain a minimum amount of information required from a recipient and the report format shall be simple and convenient.

(b) Monitoring and reviewing procedures must be sufficient to enable emissions reductions generated by funded projects to be fully credited to air quality plans.

(c) The commission may revise monitoring and review procedures from time to time as necessary or appropriate to enhance the effectiveness of the plan.

Sec. 386.055. AVAILABILITY OF EMISSIONS REDUCTION CREDITS GENERALLY. (a) A project funded under a program established under this chapter may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program.

(b) An emissions reduction generated by a program established under this chapter:

(1) may not be used as a marketable emissions reduction credit or, except as provided by Section 386.056, to offset any emissions reduction obligation; and

(2) may be used to demonstrate conformity with the state implementation plan.

(c) A project involving a new emissions reduction measure that would otherwise generate marketable credits under state or federal emissions reduction credit averaging, banking, or trading programs is not eligible for funding under a program established under this chapter unless:

(1) the project includes the transfer of the reductions that would otherwise be marketable credits to the state implementation plan or the owner or operator as provided by Section 386.056; and

(2) the reductions are permanently retired.

Sec. 386.056. AVAILABILITY OF EMISSIONS REDUCTIONS IN CERTAIN NONATTAINMENT AREAS. (a) An owner or operator of a site located in the Houston-Galveston or Dallas-Fort Worth nonattainment area may use emissions reductions generated by a program established under this chapter to offset the requirements of commission rules relating to control of air pollution from oxides of nitrogen if:

(1) the owner or operator of the site contributes to the fund \$75,000 for each ton of emissions that is used, not to exceed 25 tons annually and not to exceed one-half ton per day;

(2) the owner or operator of the site demonstrates to the commission's satisfaction that the site will be in full compliance with the commission's emissions reduction rules not later than the fifth anniversary of the date on which the emissions reductions would otherwise be required;

(3) emissions from the site are reduced by at least 80 percent from the established baseline; and

(4) the commission approves a petition by the owner or operator that demonstrates that it is technically infeasible to comply with the commission's emissions reduction requirements above 80 percent.

(b) Funds collected under this section shall be used to generate emissions reductions needed to meet the commission's attainment demonstration.

(c) The commission shall verify that emissions reductions generated from funds collected under this section occur in the same nonattainment area in which the site that purchased the emissions reductions is located.

(d) The commission shall assure that the emissions reductions funded under the programs authorized by this subchapter used to offset commission requirements under this section benefit the community in which the site using the emissions reductions is located. If there are no eligible emissions reduction projects within the community, the commission may authorize projects in an adjacent community. In this subsection, "community" means a justice of the peace precinct.

Sec. 386.057. REVIEW AND REPORTING REQUIREMENTS. (a) The commission, in consultation with the advisory board, annually shall review programs established under the plan, including each project funded under the plan, the amount granted for the project, the emissions reductions attributable to the project, and the cost-effectiveness of the project.

(b) Not later than December 1, 2002, and not later than December 1 of each subsequent second year, the commission, in consultation with the advisory board, shall publish and submit to the legislature a biennial plan report. The report must include:

(1) the information included in the annual reviews conducted under Subsection (a);

(2) specific information for individual projects as required by Subsection (c);

(3) information contained in reports received under Sections 386.205, 388.003(e), and 388.006; and

(4) a summary of the commission's activities under Section 386.052.

(c) For projects funded as part of the infrastructure program under Subchapter C, the report must:

(1) describe and evaluate:

(A) the infrastructure facilities funded under that subchapter;

(B) the degree to which the funded facilities are supporting on-road or non-road diesel projects;

(C) the amount of fuel or electricity dispensed for each facility; and

(D) associated emissions reductions and cost-effectiveness; and

(2) make a finding regarding the need for additional appropriations from the fund to improve the ability of the program to achieve its goals.

(d) The report must:

(1) account for money received, money disbursed as grants, money reserved for grants based on project approvals, and any recommended transfer of money between allocations and must estimate future demand for grant funds under the plan;

(2) describe the overall effectiveness of the plan in delivering the emissions reductions that may be credited to air quality plans;

(3) evaluate the effectiveness of the plan in soliciting and evaluating project applications, providing awards in a timely manner, and monitoring project implementation;

(4) describe adjustments made to project selection criteria and recommend any further needed changes or adjustments to the grant programs, including changes in grant award criteria, administrative procedures, or statutory provisions that would enhance the plan's effectiveness and efficiency;

(5) describe adjustments made to the maximum cost-effectiveness amount and award amount;

(6) evaluate the benefits of addressing additional pollutants as part of the plan; and

(7) include legislative recommendations necessary to improve the effectiveness of the plan.

(e) The commission shall request public comment and hold a public meeting on each draft biennial report and, in producing a final biennial report, shall consider and respond to all significant comments received.

Sec. 386.058. TEXAS EMISSIONS REDUCTION PLAN ADVISORY BOARD.

(a) The Texas Emissions Reduction Plan Advisory Board consists of 15 members appointed as provided by this section and seven ex officio members as provided by this section.

(b) The governor shall appoint to the advisory board:

(1) a representative of the trucking industry;

(2) a representative of the air conditioning manufacturing industry;

(3) a representative of the electric utility industry;

(4) a representative of regional transportation; and

(5) a representative of the Texas Council on Environmental Technology.

- (c) The lieutenant governor shall appoint to the advisory board:
- (1) a representative of the engine manufacturing industry;
 - (2) a representative of the air transportation industry;
 - (3) a representative of the environmental community;
 - (4) a representative of the fuel cell industry; and
 - (5) a representative of the energy-efficient construction industry.
- (d) The speaker of the house of representatives shall appoint to the advisory board:
- (1) a representative of consumer groups;
 - (2) a representative of the construction industry;
 - (3) a representative of the automobile industry;
 - (4) a representative of the agriculture industry; and
 - (5) a representative of the fuel industry.
- (e) Appointed members of the advisory board serve staggered two-year terms. The terms of seven appointed members expire February 1 of each even-numbered year. The terms of eight appointed members expire February 1 of each odd-numbered year. An appointed member may be reappointed to a subsequent term.
- (f) Ex officio members of the advisory board are:
- (1) the presiding officer of the senate standing committee having primary jurisdiction over matters related to natural resources;
 - (2) the presiding officer of the house standing committee having primary jurisdiction over matters related to environmental regulation;
 - (3) a representative of the commission, designated by the executive director;
 - (4) a representative of the General Land Office, designated by the Commissioner of the General Land Office;
 - (5) a representative of the comptroller's office, designated by the comptroller;
 - (6) a representative of the Railroad Commission of Texas, designated by the presiding officer of the agency; and
 - (7) a representative of the United States Environmental Protection Agency's Region 6 office, designated by the United States Environmental Protection Agency Region 6 administrator.
- (g) The advisory board annually shall elect a presiding officer.
- (h) The advisory board shall review the plan and shall recommend to the commission changes to revenue sources or financial incentives or any legislative, regulatory, or budgetary changes needed.
- (i) The commission shall provide necessary staff support to the advisory board.

[Sections 386.059-386.100 reserved for expansion]

**SUBCHAPTER C. DIESEL EMISSIONS
REDUCTION INCENTIVE PROGRAM**

Sec. 386.101. DEFINITIONS. In this subchapter:

- (1) "Cost-effectiveness" means the total dollar amount expended divided by the total number of tons of oxides of nitrogen emissions reduction attributable to that expenditure. Cost-effectiveness for the program as a whole and for particular projects under the program is calculated as provided by Sections 386.105 and 386.106.
- (2) "Fuel cell" means an electrochemical device that uses fuel and oxidant to continuously generate electricity.
- (3) "Motor vehicle" means a self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Chapter 502, Transportation Code.

(4) "Non-road diesel" means a vehicle or piece of equipment, excluding a motor vehicle or on-road diesel or an implement of husbandry that is used exclusively for agricultural purposes, that is powered by a non-road engine, including:

(A) non-road nonrecreational equipment and vehicles;

(B) construction equipment;

(C) locomotives;

(D) marine vessels; and

(E) other high-emitting diesel engine categories established by the commission.

(5) "Non-road engine" means an internal combustion engine that is:

(A) in or on a piece of equipment that is self-propelled or that propels itself and performs another function, excluding a vehicle that is used solely for competition;

(B) in or on a piece of equipment that is intended to be propelled while performing its function; or

(C) designed to be and capable of being carried or moved from one location to another.

(6) "On-road diesel" means an on-road diesel-powered motor vehicle that has a gross vehicle weight rating of 10,000 pounds or more.

(7) "Program" means the diesel emissions reduction incentive program established under this subchapter.

(8) "Qualifying fuel" includes any liquid or gaseous fuel or additives registered or verified by the United States Environmental Protection Agency that is ultimately dispensed into a motor vehicle or on-road or non-road diesel that provides reductions of emissions of oxides of nitrogen beyond reductions required by state or federal law.

(9) "Repower" means to replace an old engine powering an on-road or non-road diesel with:

(A) a new engine that emits at least 30 percent less than the oxides of nitrogen emissions standard required by federal regulation for the current model year for that engine;

(B) an engine manufactured later than 1987 that emits at least 30 percent less than the oxides of nitrogen emissions standard emitted by a new engine certified to the baseline oxides of nitrogen emissions standard for that engine;

(C) an engine manufactured before 1988 that emits not more than 50 percent of the oxides of nitrogen emissions standard emitted by a new engine certified to the baseline oxides of nitrogen emissions standard for that engine; or

(D) electric motors, drives, or fuel cells.

(10) "Retrofit" means to equip an engine and fuel system with new emissions-reducing parts or technology verified by the United States Environmental Protection Agency after manufacture of the original engine and fuel system.

Sec. 386.102. PROGRAM. (a) The commission shall establish and administer a diesel emissions reduction incentive program. Under the program, the commission shall provide grants for eligible projects to offset the incremental cost of projects that reduce emissions of oxides of nitrogen from high-emitting diesel sources in nonattainment areas and affected counties of the state. The commission shall determine the eligibility of projects.

(b) Projects that may be considered for a grant under the program include:

- (1) purchase or lease of non-road diesels;
- (2) emissions-reducing retrofit projects for on-road or non-road diesels;
- (3) emissions-reducing repower projects for on-road or non-road diesels;
- (4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;
- (5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower emissions of oxides of nitrogen;
- (6) use of qualifying fuel; and
- (7) implementation of infrastructure projects.

(c) A project listed in Subsection (b) is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

Sec. 386.103. APPLICATION FOR GRANT. (a) Any person as defined by Section 382.003 that owns one or more on-road or non-road diesels that operate primarily within a nonattainment area or affected county of this state or that otherwise contributes to the state inventory of emissions of oxides of nitrogen may apply for a grant under the program.

(b) An application for a grant under this subchapter must be made on an application provided by the commission and must contain information required by the commission, including:

- (1) a detailed description of the proposed project;
- (2) information necessary for the commission to determine whether the project meets eligibility requirements for the type of project proposed, including a statement of the amounts of any other public financial assistance the project will receive; and
- (3) other information the commission may require.

Sec. 386.104. ELIGIBILITY REQUIREMENTS. (a) The commission shall establish criteria for setting priorities for projects eligible to receive grants under this subchapter. The commission shall review and may modify the criteria and priorities as appropriate.

(b) A proposed project as described in Section 386.102 must meet the requirements of this section to be eligible for a grant under the program.

(c) For a proposed project as described by Section 386.102(b), other than a project involving a marine vessel or engine, not less than 75 percent of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state. For a proposed project involving a marine vessel or engine, the vessel or engine must be operated in the intercoastal waterways or bays adjacent to a nonattainment area or affected county of this state for a sufficient amount of time over the lifetime of the project, as determined by the commission, to meet the cost-effectiveness requirements of Section 386.105.

(d) Each proposed project must meet the cost-effectiveness requirements of Sections 386.105 and 386.106.

(e) A proposed repower project must exceed commission requirements relating to baseline emissions levels of the engines being replaced under the project.

(f) A proposed retrofit, repower, or add-on equipment project must document, in a manner acceptable to the commission, a reduction in emissions of oxides of nitrogen of at least 30 percent compared with the baseline emissions adopted by the commission for the relevant engine year and application. After study of available emissions reduction technologies, after public notice and comment, and after consultation with the advisory board, the commission may revise the minimum percentage reduction in emissions of oxides of nitrogen required by this subsection to improve the ability of the program to achieve its goals.

(g) If a baseline emissions standard does not exist for on-road or non-road diesels in a particular category, the commission, for purposes of this subchapter, shall establish an appropriate baseline emissions level for comparison purposes.

(h) The commission may approve payments to offset the incremental cost, over the expected lifetime of the motor vehicle or on-road or non-road diesel, of the use of qualifying fuel in a motor vehicle or on-road or non-road diesel if the proposed project as a whole, including the incremental fuel cost, meets the requirements of this subchapter. The commission shall develop an appropriate method for converting incremental fuel costs over the lifetime of the motor vehicle or on-road or non-road diesel into an initial cost for purposes of determining cost-effectiveness as required by Section 386.105.

Sec. 386.105. CALCULATION OF COST-EFFECTIVENESS. (a) In calculating cost-effectiveness, one-time grants of money at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project by the commission, taking into account the interest rate on bonds, interest earned by state funds, and other factors the commission considers appropriate.

(b) The commission shall establish reasonable methodologies for evaluating project cost-effectiveness consistent with Subsection (a) and with accepted methods.

(c) The commission shall develop protocols for calculating oxides of nitrogen emissions reductions not otherwise required by state or federal law in nonattainment areas and affected counties of this state from representative project types over the life of the projects.

(d) The commission may include in cost-effectiveness determinations only reductions in oxides of nitrogen emissions that are achieved in nonattainment areas and affected counties of this state.

Sec. 386.106. COST-EFFECTIVENESS CRITERIA; DETERMINATION OF GRANT AMOUNT. (a) Except as provided by Section 386.107, the commission may not award a grant for a proposed project the cost-effectiveness of which, calculated in accordance with Section 386.105 and criteria developed under that section, exceeds \$13,000 per ton of oxides of nitrogen emissions reduced in the nonattainment area or affected county for which the project is proposed. This subsection does not restrict commission authority under other law to require emissions reductions with a cost-effectiveness that exceeds \$13,000 per ton.

(b) The commission may not award a grant that, net of taxes, provides an amount that exceeds the incremental cost of the proposed project.

(c) The commission shall adopt guidelines for capitalizing incremental lease costs so those costs may be offset by a grant under this subchapter.

(d) In determining the amount of a grant under this subchapter, the commission shall reduce the incremental cost of a proposed new purchase, lease, retrofit, repower, or add-on equipment project by the value of any existing financial incentive that directly reduces the cost of the proposed project, including tax credits or deductions, other grants, or any other public financial assistance.

Sec. 386.107. ADJUSTMENT TO MAXIMUM COST-EFFECTIVENESS AMOUNT AND AWARD AMOUNT. After study of available emissions reduction technologies and costs and after public notice and comment, the commission, in consultation with the advisory board, may change the values of the maximum grant award criteria established in Section 386.106 to account for inflation or to improve the ability of the program to achieve its goals.

Sec. 386.108. INFRASTRUCTURE PROJECTS. (a) The commission shall provide funding under Section 386.252(a)(1) for infrastructure projects.

(b) To implement the requirement of Subsection (a), the commission shall:

(1) solicit applications for a balanced mix of projects involving fueling and electrification infrastructure that is linked to motor vehicle and on-road and non-road diesel projects and consistent with program goals;

(2) coordinate infrastructure projects with motor vehicle and on-road and non-road diesel projects representing a broad range of fuels, technologies, and applications as appropriate and consistent with the goals of this chapter;

(3) adopt guidelines and criteria for infrastructure projects to be funded under the program; and

(4) oversee, monitor, and evaluate the use of grants awarded under this program and report on the effectiveness of this grant program in relation to the purposes and goals of this chapter.

Sec. 386.109. ELIGIBLE INFRASTRUCTURE PROJECTS. The commission may consider for funding under Section 386.108:

(1) the purchase and installation at a site of equipment that is designed primarily to dispense qualifying fuel, other than standard gasoline or diesel, or the purchase of on-site mobile fueling equipment;

(2) infrastructure projects, including auxiliary power units, designed to dispense electricity to motor vehicles and on-road and non-road diesels; and

(3) a project that involves a technology that allows a vehicle to replace with electric power, while the vehicle is parked, the power normally supplied by the vehicle's internal combustion engine.

Sec. 386.110. APPLICATION PACKAGE FOR INFRASTRUCTURE PROJECTS. (a) The commission shall develop a simple, standardized application package for infrastructure project grants under this subchapter. The package must include:

(1) an application form;

(2) a brief description of:

(A) the program;

(B) the projects that are eligible for available funding;

(C) the selection criteria and evaluation process; and

(D) the required documentation;

(3) the name of a person or office to contact for more information;

(4) an example of the contract that an applicant will be required to execute before receiving a grant; and

(5) any other information the commission considers useful to inform the applicant and expedite the application process.

(b) The application form shall require as much information as the commission determines is necessary to properly evaluate each project but shall otherwise minimize the information required.

(c) The commission may not require an applicant, as part of the application process, to calculate tons of emissions reduced or cost-effectiveness.

Sec. 386.111. APPLICATION REVIEW PROCEDURES. (a) The commission shall review an application for a grant for a project authorized under this subchapter, including an application for a grant for an infrastructure project, immediately on receipt of the application. If the commission determines that an application is incomplete, the commission shall notify the applicant, not later than the 15th working day after the date on which the commission received the application, with an explanation of what is missing from the application. The commission shall record the date and time of receipt of each application the commission determines to be complete and shall evaluate the completed application according to the appropriate project criteria. Subject to available funding, the commission shall make a final determination on an application as soon as possible and not later than the 60th working day after the date the application is determined to be complete.

(b) The commission shall make every effort to expedite the application review process and to award grants to qualified projects in a timely manner. To the extent possible, the commission shall coordinate project review and approval with any timing constraints related to project purchases or installations to be made by an applicant.

(c) The commission may deny an application for a project that does not meet the applicable project criteria or that the commission determines is not made in good faith, is not credible, or is not in compliance with this chapter and the goals of this chapter.

(d) Subject to availability of funds, the commission shall award a grant under this subchapter in conjunction with the execution of a contract that obligates the commission to make the grant and the recipient to perform the actions described in the recipient's grant application. The contract must incorporate provisions for recapturing grant money in proportion to any loss of emissions reductions or underachievement in dispensing qualifying fuel compared with the volume of emissions reductions or amount of fuel dispensed that was projected in awarding the grant. Grant money recaptured under the contract provision shall be deposited in the fund and reallocated for other projects under this subchapter.

(e) An applicant may seek reimbursement for qualifying equipment installed after the effective date of this program.

Sec. 386.112. ON-ROAD DIESEL PURCHASE OR LEASE INCENTIVE. (a) The commission shall develop a purchase or lease incentive program for new on-road diesels and shall adopt rules necessary to implement the program and to reimburse a purchaser or lessee of a new on-road diesel that is eligible for reimbursement of incremental costs under this subchapter.

(b) The program shall authorize statewide incentives for the reimbursement of incremental costs for the purchase or lease, according to the schedule provided by Section 386.113, of new on-road diesels that are certified by the United States Environmental Protection Agency to an emissions standard provided by Section 386.113 if the purchaser or lessee of the on-road diesel agrees to register the vehicle in this state and to operate the on-road diesel in this state for not less than 75 percent of the on-road diesel's annual mileage.

(c) Only one incentive will be provided for each new on-road diesel. The incentive shall be provided to the purchaser if the on-road diesel is not purchased for the purpose of leasing the on-road diesel to another person, or to the lessee and not to the purchaser if the on-road diesel is purchased for the purpose of leasing the on-road diesel to another person. A lease incentive for a new on-road diesel shall be prorated based on an eight-year lease term.

Sec. 386.113. ON-ROAD DIESEL PURCHASE OR LEASE INCENTIVE SCHEDULE. A new on-road diesel is eligible for reimbursement of incremental costs according to the following schedule:

<u>Incentive emissions standard (oxides of nitrogen)</u>		<u>Reimbursement amount</u>
<u>Date of manufacture (2001)</u>	<u>Date of manufacture (10/01/02-9/30/06)</u>	
<u>2.5 g/bhp-hr NOx</u>	<u>1.2 g/bhp-hr NOx</u>	<u>up to \$15,000</u>
<u>1.5 g/bhp-hr NOx</u>	<u>0.5 g/bhp-hr NOx</u>	<u>up to \$25,000</u>
<u>0.0 g/bhp-hr NOx</u>	<u>0.0 g/bhp-hr NOx</u>	<u>up to \$25,000</u>

Sec. 386.114. MODIFICATION OF INCENTIVE EMISSIONS STANDARDS. After evaluating new technologies and after public notice and comment, the commission, in consultation with the advisory board, may change the incentive emissions standards established by Section 386.113 to improve the ability of the program to achieve its goals.

[Sections 386.115-386.150 reserved for expansion]
SUBCHAPTER D. MOTOR VEHICLE PURCHASE
OR LEASE INCENTIVE PROGRAM

Sec. 386.151. DEFINITIONS. In this subchapter:

(1) "Bin" or "emissions bin" means a set of emissions standards applicable to exhaust pollutants measured on the Federal Test Procedure (FTP) according to 40 C.F.R. Section 86.1811-04.

(2) "Light-duty motor vehicle" means a motor vehicle with a gross vehicle weight rating of less than 10,000 pounds.

(3) "Motor vehicle" means a self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Chapter 502, Transportation Code.

Sec. 386.152. COMPTROLLER AND COMMISSION DUTIES REGARDING LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM. (a) The comptroller and the commission shall develop a purchase or lease incentive program for new light-duty motor vehicles and shall adopt rules necessary to implement the program.

(b) The program shall authorize statewide incentives for the purchase or lease, according to the schedule provided by Section 386.153, of new light-duty motor vehicles that are certified by the United States Environmental Protection Agency to meet an emissions standard that is at least as stringent as those provided by Section 386.153 for a purchaser or lessee who agrees to register the vehicle in this state and to operate the vehicle in this state for not less than 75 percent of the vehicle's annual mileage.

(c) Only one incentive will be provided for each new light-duty motor vehicle. The incentive shall be provided to the lessee and not to the purchaser if the motor vehicle is purchased for the purpose of leasing the vehicle to another person.

Sec. 386.153. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE SCHEDULE. A new light-duty motor vehicle is eligible for an incentive according to the following schedule:

Incentive emissions standard and incentive amount

Model year 2003-2007

Bin 4 \$1,250

Bin 3 \$2,225

Bin 2 \$3,750

Bin 1 \$5,000

Sec. 386.154. MODIFICATION OF INCENTIVE EMISSIONS STANDARDS. After evaluating new technologies and after public notice and comment, the commission, in consultation with the advisory board, may change the incentive emissions standards established by Section 386.153 to improve the ability of the program to achieve its goals.

Sec. 386.155. MANUFACTURER'S REPORT. At the beginning of but not later than July 1 of each year preceding the vehicle model year, a manufacturer of motor vehicles shall provide to the commission a list of the new vehicle models that the manufacturer intends to sell in this state during that model year that meet the incentive emissions standards established by the schedules set out under Section 386.153.

Sec. 386.156. LIST OF ELIGIBLE MOTOR VEHICLES. (a) On August 1 each year the commission shall publish and provide to the comptroller a list of the new model motor vehicles as listed for the commission under Section 386.155.

(b) The comptroller shall distribute the list of eligible motor vehicles to all new motor vehicle dealers and leasing agents in this state.

Sec. 386.157. VEHICLE EMISSIONS INFORMATION LABEL. (a) To enable consumers to make informed purchase decisions based on the relative amounts of emissions produced by motor vehicles within each vehicle class, the motor vehicle manufacturer or distributor shall affix on each new light-duty motor vehicle for sale or lease in this state a clearly legible label that shows the vehicle's class rating under the United States Environmental Protection Agency's vehicle class rating system. If the United States Environmental Protection Agency develops another vehicle emissions rating system that gives consumers similar emissions information by vehicle class, the commission by rule may designate that vehicle rating system.

(b) A new motor vehicle dealer or leasing agent shall make available to the dealer's or leasing agent's prospective purchasers or lessees a copy of the list prepared and published by the commission under Section 386.156.

Sec. 386.158. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE. (a) A person who purchases or leases a new light-duty motor vehicle that has been listed under Section 386.155 is eligible for an incentive under this subchapter.

(b) A lease incentive for a new light-duty motor vehicle shall be prorated based on a four-year lease term.

(c) To receive money under an incentive program provided by this subchapter, the purchaser or lessee of a new light-duty motor vehicle eligible for an incentive under this subchapter shall apply for the incentive in the manner provided by law or by rule of the comptroller.

Sec. 386.159. PUBLIC INFORMATION. (a) The commission in cooperation with the comptroller shall develop and implement a program to inform the public and

new motor vehicle dealers and leasing agents about the motor vehicle purchase or lease incentive program.

(b) The Texas Department of Transportation shall insert a notice describing the light-duty motor vehicle purchase or lease incentive program with each annual vehicle registration renewal notice.

Sec. 386.160. COMPTROLLER TO ACCOUNT FOR MOTOR VEHICLE PURCHASE OR LEASE INCENTIVES. (a) The comptroller by rule shall develop a method to administer and account for the motor vehicle purchase or lease incentives authorized by this subchapter and to pay incentive money to the purchaser or lessee of a new motor vehicle, on application of the purchaser or lessee as provided by this subchapter.

(b) The comptroller shall develop and publish forms and instructions for the purchaser or lessee of a new motor vehicle to use in applying to the comptroller for an incentive payment under this subchapter. The comptroller shall make the forms available to new motor vehicle dealers and leasing agents. Dealers and leasing agents shall make the forms available to their prospective purchasers or lessees.

(c) In addition to other forms developed and published under this section, the comptroller shall develop and publish a verification form by which, with information provided by the dealer or leasing agent, the comptroller can verify the sale of a vehicle covered by this subchapter. The verification form shall include at least the name of the purchaser, the vehicle identification number of the vehicle involved, the date of the purchase, and the name of the new motor dealer or leasing agent involved in the transaction. At the time of sale or lease of a vehicle eligible for an incentive under this subchapter, the dealer or leasing agent shall complete the verification form supplied to the dealer by the comptroller. The purchaser or lessee shall include the completed verification form as part of the purchaser's application for an incentive. The dealer shall maintain a copy of the completed verification form for at least two years from the date of the transaction.

Sec. 386.161. REPORT TO COMMISSION; SUSPENSION OF PURCHASE OR LEASE INCENTIVES. (a) The comptroller shall report to the commission annually regarding motor vehicle purchase or lease incentives.

(b) If the balance available for motor vehicle purchase or lease incentives falls below 15 percent of the total allocated for the incentives during that fiscal year, the comptroller by order shall suspend the incentives until the date the comptroller can certify that the balance available in the fund for incentives is an amount adequate to resume the incentives or the beginning of the next fiscal year, whichever is earlier. If the comptroller suspends the incentives, the comptroller shall immediately notify the commission and all new motor vehicle dealers and leasing agents that the incentives have been suspended.

(c) The comptroller shall establish a toll-free telephone number available to motor vehicle dealers and leasing agents for the dealers and agents to call to verify that incentives are available. The comptroller may provide for issuing verification numbers over the telephone line.

(d) Reliance by a dealer or leasing agent on information provided by the comptroller or commission is a complete defense to an action involving or based on eligibility of a vehicle for an incentive or availability of vehicles eligible for an incentive.

[Sections 386.162-386.200 reserved for expansion]

SUBCHAPTER E. ENERGY EFFICIENCY

GRANT PROGRAM

Sec. 386.201. DEFINITIONS. In this subchapter:

(1) "Electric cooperative" has the meaning assigned by Section 11.003, Utilities Code.

(2) "Electric utility" has the meaning assigned by Section 31.002, Utilities Code.

(3) "Municipally owned utility" has the meaning assigned by Section 11.003, Utilities Code.

Sec. 386.202. GRANT PROGRAM. (a) The utility commission shall develop an energy efficiency grant program using program templates that are consistent with rules of the utility commission adopted under Section 39.905, Utilities Code.

(b) Programs approved under this subchapter must include the retirement, replacement, and recycling of materials and appliances that contribute to peak energy demand to ensure the reduction of energy demand, peak loads, and associated emissions of air contaminants.

Sec. 386.203. ADMINISTRATION OF GRANTS. Money allocated by the utility commission under the grant program developed under this subchapter shall be administered by electric utilities, electric cooperatives, and municipally owned utilities. A participating electric utility, electric cooperative, or municipally owned utility shall be reimbursed from the fund for costs incurred by the utility in administering the energy efficiency grant program established under this subchapter. Reimbursable administrative costs of a participating entity may not exceed 10 percent of the entity's total program budget before January 1, 2003, and may not exceed five percent of the entity's total program budget on or after that date.

Sec. 386.204. LIMITATION ON DUTY OF PARTICIPATING UTILITY. (a) This subchapter obligates an electric utility, electric cooperative, or municipally owned utility only to administer the funding allocated to the entity by the utility commission in accordance with this subchapter.

(b) The obligation of an electric utility under this subchapter is separate and apart from, and does not affect an obligation of the electric utility under, Section 39.905, Utilities Code, or a rule adopted under that section.

(c) Emissions reductions achieved by a program implemented under this subchapter may not be used by an electric utility, electric cooperative, or municipally owned utility to satisfy an obligation to reduce air contaminant emissions under state or federal law or a state or federal regulatory program.

Sec. 386.205. EVALUATION OF STATE ENERGY EFFICIENCY PROGRAMS. In cooperation with the laboratory, the utility commission shall provide an annual report to the commission that, by county, quantifies the reductions of energy demand, peak loads, and associated emissions of air contaminants achieved from the programs implemented under this subchapter and from those implemented under Section 39.905, Utilities Code.

[Sections 386.206-386.250 reserved for expansion]

SUBCHAPTER F. TEXAS EMISSIONS

REDUCTION PLAN FUND

Sec. 386.251. FUND. (a) The Texas emissions reduction plan fund is an account in the state treasury.

(b) The fund is administered by the comptroller for the benefit of the Texas emissions reduction plan established under this chapter.

(c) The fund consists of money from:

(1) fees and other amounts charged and collected under Sections 502.1675 and 548.5055, Transportation Code;

(2) the surcharge on the sale, lease, or rental of new or used construction equipment under Section 151.0515, Tax Code; and

(3) surcharges collected under Sections 152.0215 and 156.054, Tax Code.

Sec. 386.252. USE OF FUND. (a) Money in the fund may be used only to implement and administer programs established under the plan and shall be allocated as follows:

(1) for the diesel emissions reduction incentive program, 67 percent of the money in the fund, of which not more than three percent may be used for infrastructure projects and not more than 15 percent may be used for on-road diesel purchase or lease incentives;

(2) for the motor vehicle purchase or lease incentive program, 15 percent of the money in the fund;

(3) for the energy efficiency grant program, 7.5 percent of the money in the fund;

(4) for the new technology research and development program, 7.5 percent of the money in the fund, of which up to \$250,000 is allocated for administration, up to \$200,000 is allocated for a health effects study, and \$500,000 is to be deposited in the state treasury to the credit of the clean air account created under Section 382.0622 to supplement funding for air quality planning activities in affected counties; and

(5) for administrative costs incurred by the utility commission, the commission, the comptroller, and the laboratory, three percent.

(b) Up to 15 percent of the money allocated under Subsection (a) to a particular program and not expended under that program by March 1 of the second fiscal year of a fiscal biennium may be used for another program under the plan as determined by the commission in consultation with the advisory board.

CHAPTER 387. NEW TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM

Sec. 387.001. DEFINITION. In this chapter, "program" means the new technology research and development program.

Sec. 387.002. TEXAS COUNCIL ON ENVIRONMENTAL TECHNOLOGY. (a) The Texas Council on Environmental Technology consists of 11 members appointed by the governor to represent the academic and nonprofit communities. The governor shall designate from the council members a presiding officer of the council. Members of the council serve six-year staggered terms, with the terms of three or four members expiring February 1 of each odd-numbered year.

(b) The Texas Council on Environmental Technology shall work to enhance the entrepreneurial and inventive spirit of Texans to assist in developing solutions to air, water, and waste problems by:

(1) identifying and evaluating new technologies and seeking the approval of the United States Environmental Protection Agency for and facilitating the deployment of those technologies; and

(2) assisting the commission and the United States Environmental Protection Agency in the process of ensuring credit for new, innovative, and creative technological advancements.

(c) Council offices and projects shall be housed at the Center for Energy and Environmental Resources at The University of Texas at Austin.

Sec. 387.003. NEW TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM. (a) The Texas Council on Environmental Technology shall establish and administer a new technology research and development program as provided by this chapter.

(b) Under the program, the Texas Council on Environmental Technology shall provide grants to be used to support development of emissions-reducing technologies that may be used for projects eligible for awards under Chapter 386 and other new technologies that show promise for commercialization. The primary objective of this chapter is to promote the development of commercialization technologies that will support projects that may be funded under Chapter 386 and this chapter.

Sec. 387.004. SOLICITATION OF NEW TECHNOLOGY PROPOSALS. The Texas Council on Environmental Technology from time to time shall issue specific requests for proposals (RFPs) or program opportunity notices (PONs) for technology projects to be funded under the program.

Sec. 387.005. ELIGIBLE PROJECTS; PRIORITIES. (a) Grants awarded under this chapter shall be directed toward a balanced mix of:

(1) retrofit and add-on technologies to reduce emissions from the existing stock of vehicles targeted by the Texas emissions reduction plan;

(2) advanced technologies for new engines and vehicles that produce very-low or zero emissions of oxides of nitrogen, including stationary and mobile fuel cells;

(3) studies to improve air quality assessment and modeling;

(4) advanced technologies that promote increased building and appliance energy performance; and

(5) advanced technologies that reduce emissions from other significant sources.

(b) The Texas Council on Environmental Technology shall identify and evaluate and may consider making grants for technology projects that would allow qualifying fuels to be produced from energy resources in this state. In considering projects under this subsection, the council shall give preference to projects involving otherwise unusable energy resources in this state and producing qualifying fuels at prices lower than otherwise available and low enough to make the projects to be funded under the program economically attractive to local businesses in the area for which the project is proposed.

(c) In soliciting proposals under Section 387.004 and determining how to allocate grant money available for projects under this chapter, the Texas Council on Environmental Technology shall give special consideration to advanced technologies and retrofit or add-on projects that provide multiple benefits by reducing emissions of particulates and other air pollutants.

(d) A project that involves publicly or privately owned vehicles or vessels is eligible for funding under this chapter if the project meets all applicable criteria.

(e) Studies authorized under Subsection (a)(3) shall be consistent with air quality research priorities identified by the commission.

Sec. 387.006. EVIDENCE OF COMMERCIALIZATION POTENTIAL REQUIRED. (a) An application for a technology grant under this chapter must show clear and compelling evidence that:

(1) the proposed technology project has a strong commercialization plan and organization; and

(2) the technology proposed for funding:

(A) is likely to be offered for commercial sale in this state within five years after the date of the application for funding; and

(B) once commercialized, will offer opportunities for projects eligible for funding under Chapter 386.

(b) The Texas Council on Environmental Technology shall consider specifically, for each proposed technology project application:

(1) the projected potential for reduced emissions of oxides of nitrogen and the cost-effectiveness of the technology once it has been commercialized;

(2) the potential for the technology to contribute significantly to air quality goals; and

(3) the strength of the commercialization plan.

Sec. 387.007. COST-SHARING. The Texas Council on Environmental Technology may require cost-sharing for technology projects funded under this chapter but may not require repayment of grant money.

Sec. 387.008. ENVIRONMENTAL RESEARCH FUND. (a) The environmental research fund is an account in the general revenue fund. The fund consists of money from gifts, grants, or donations to the fund for designated or general use and from any other source designated by the legislature.

(b) Money in the environmental research fund may be used only for the operation and projects of the Texas Council on Environmental Technology.

Sec. 387.009. ADVISORY COMMITTEES. The Texas Council on Environmental Technology may appoint advisory committees as necessary or desirable to assist the council in performing its duties. An advisory committee may include representatives of industry, environmental groups, consumer groups, local governments, agriculture, the commission, the General Land Office, and the Railroad Commission of Texas. Any senator or representative desiring to do so may participate on any advisory committee appointed under this section. Members of an advisory committee are not entitled to compensation.

Sec. 387.010. REPORTS. Not later than December 1, 2002, and not later than December 1 of each subsequent second year, the Texas Council on Environmental Technology shall report to the legislature on projects funded under the new technology research and development program, describing the technical objectives and accomplishments of the project and the progress of the project technology toward commercialization.

CHAPTER 388. TEXAS BUILDING ENERGY PERFORMANCE STANDARDS

Sec. 388.001. LEGISLATIVE FINDINGS. (a) The legislature finds that an effective building energy code is essential to:

(1) reducing the air pollutant emissions that are affecting the health of residents of this state;

(2) moderating future peak electric power demand;

(3) assuring the reliability of the electrical grid; and

(4) controlling energy costs for residents and businesses in this state.

(b) The legislature further finds that this state has a number of unique climate types, all of which require more energy for cooling than for heating, and that there are many cost-effective measures that can reduce peak energy use and reduce cooling and other energy costs in buildings.

Sec. 388.002. DEFINITIONS. In this chapter:

(1) "Affected county" has the meaning assigned by Section 386.001.

(2) "Building" has the meaning assigned by the International Building Code.

(3) "Code official" means an individual employed by a local jurisdiction to review construction plans and other documents, inspect construction, or administer and enforce building standards under this chapter.

(4) "Code-certified inspector" means an inspector who is certified by the International Code Council, the Building Officials and Code Administrators International, Inc., the International Conference of Building Officials, or the Southern Building Code Congress International to have met minimum standards for interpretation and enforcement of requirements of the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code.

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

(6) "International Residential Code" means the International Residential Code for One- and Two-Family Dwellings as adopted by the International Code Council.

(7) "International Energy Conservation Code" means the International Energy Conservation Code as adopted by the International Code Council.

(8) "Laboratory" means the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System.

(9) "Local jurisdiction" means the authority responsible for implementation and enforcement of local building codes.

(10) "Municipality" has the meaning assigned by Section 1.005, Local Government Code.

(11) "Nonattainment area" has the meaning assigned by Section 386.001.

(12) "Single-family residential" means having the character of a detached one- or two-family dwelling or a multiple single-family dwelling not more than three stories high with separate means of egress, including the accessory structures of the dwelling.

Sec. 388.003. ADOPTION OF BUILDING ENERGY EFFICIENCY PERFORMANCE STANDARDS. (a) To achieve energy conservation in single-family residential construction, the energy efficiency chapter of the International Residential Code, as it existed on May 1, 2001, is adopted as the energy code in this state for single-family residential construction.

(b) To achieve energy conservation in all other residential, commercial, and industrial construction, the International Energy Conservation Code as it existed on May 1, 2001, is adopted as the energy code for use in this state for all other residential, commercial, and industrial construction.

(c) A municipality or county shall establish procedures:

(1) for the administration and enforcement of the codes; and

(2) to ensure that code-certified inspectors shall perform inspections and enforce the code in the inspectors' jurisdictions.

(d) A municipality or county may establish procedures to adopt local amendments to the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code.

(e) Local amendments may not result in less stringent energy efficiency requirements in nonattainment areas and in affected counties than the energy

efficiency chapter of the International Residential Code or International Energy Conservation Code. Local amendments must comply with the National Appliance Energy Conservation Act of 1987 (42 U.S.C. Sections 6291-6309), as amended. The laboratory, at the request of a municipality or county, shall determine the relative impact of proposed local amendments to an energy code, including whether proposed amendments are substantially equal to or less stringent than the unamended code. For the purpose of establishing uniform requirements throughout a region, and on request of a council of governments, a county, or a municipality, the laboratory may recommend a climatically appropriate modification or a climate zone designation for a county or group of counties that is different from the climate zone designation in the unamended code. The laboratory shall:

(1) report its findings to the council, county, or municipality, including an estimate of any energy savings potential above the base code from local amendments; and

(2) annually submit a report to the commission:

(A) identifying the municipalities and counties whose codes are more stringent than the unamended code, and whose codes are equally stringent or less stringent than the unamended code; and

(B) quantifying energy savings from this program.

(f) Each municipality and county shall periodically review and consider revisions made by the International Code Council to the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code adopted after May 1, 2001.

(g) The laboratory shall have the authority to set and collect fees to perform certain tasks in support of the requirements in Sections 388.004, 388.007, and 388.008.

(h) Within the boundaries of an airport operated by a joint board created under Subchapter D, Chapter 22, Transportation Code, the constituent agencies of which are populous home-rule municipalities, the powers of a municipality under this section are exclusively the powers of the joint board.

Sec. 388.004. ENFORCEMENT OF ENERGY STANDARDS OUTSIDE OF MUNICIPALITY. For construction outside of the local jurisdiction of a municipality:

(1) a building certified by a national, state, or local accredited energy efficiency program shall be considered in compliance;

(2) a building with inspections from private code-certified inspectors using the energy efficiency chapter of the International Residential Code or International Energy Conservation Code shall be considered in compliance; and

(3) a builder who does not have access to either of the above methods for a building shall certify compliance using a form provided by the laboratory, enumerating the code-compliance features of the building.

Sec. 388.005. ENERGY EFFICIENCY PROGRAMS IN CERTAIN POLITICAL SUBDIVISIONS. (a) In this section, "political subdivision" means:

(1) an affected county; or

(2) any political subdivision other than a school district in a nonattainment area or in an affected county.

(b) Each political subdivision shall implement all energy efficiency measures that meet the standards established for a contract for energy conservation measures under Section 302.004(b), Local Government Code, in order to reduce electricity consumption by the existing facilities of the political subdivision.

(c) Each political subdivision shall establish a goal to reduce the electric consumption by the political subdivision by five percent each year for five years, beginning January 1, 2002.

(d) A political subdivision that does not attain the goals under Subsection (c) must include in the report required by Subsection (e) justification that the political subdivision has already implemented all available measures.

(e) A political subdivision annually shall report to the State Energy Conservation Office, on forms provided by that office, regarding the political subdivision's efforts and progress under this section. The State Energy Conservation Office shall provide assistance and information to political subdivisions to help the political subdivisions meet the goals set under this section.

Sec. 388.006. STATE ENERGY CONSERVATION OFFICE EVALUATION. The State Energy Conservation Office annually shall provide the commission with an evaluation of the effectiveness of state and political subdivision energy efficiency programs, including programs under this chapter.

Sec. 388.007. DISTRIBUTION OF INFORMATION AND TECHNICAL ASSISTANCE. (a) The laboratory shall make available to builders, designers, engineers, and architects code implementation materials that explain the requirements of the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code and that describe methods of compliance acceptable to code officials.

(b) The materials may include software tools, simplified prescriptive options, and other materials as appropriate. The simplified materials may be designed for projects in which a design professional is not involved.

(c) The laboratory may provide local jurisdictions with technical assistance concerning implementation and enforcement of the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code.

Sec. 388.008. DEVELOPMENT OF HOME ENERGY RATINGS. (a) The laboratory shall develop a standardized report format to be used by providers of home energy ratings. The form must be designed to give potential buyers information on a structure's energy performance, including:

(1) insulation;

(2) types of windows;

(3) heating and cooling equipment;

(4) water heating equipment;

(5) additional energy conserving features, if any;

(6) results of performance measurements of building tightness and forced air distribution; and

(7) an overall rating of probable energy efficiency relative to the minimum requirements of the International Energy Conservation Code or the energy efficiency chapter of the International Residential Code, as appropriate.

(b) The laboratory shall establish a public information program to inform homeowners, sellers, buyers, and others regarding home energy ratings.

(c) The home energy ratings program shall be implemented by September 1, 2002.

CHAPTER 389. EMISSIONS REDUCTION RECOGNITION EFFORTS

Sec. 389.001. DEFINITION. In this chapter, "commission" means the Texas Natural Resource Conservation Commission.

Sec. 389.002. USE OF CERTAIN INFORMATION FOR FEDERAL RECOGNITION OF EMISSIONS REDUCTIONS. The commission, using information derived from the reports to the commission under Sections 386.205, 388.003(e), and 388.006, shall take all appropriate and necessary actions so that emissions reductions achieved by means of activities under Chapters 386 and 388 are credited by the United States Environmental Protection Agency to the appropriate emissions reduction objectives in the state implementation plan.

SECTION 2. Subchapter C, Chapter 151, Tax Code, is amended by adding Section 151.0515 to read as follows:

Sec. 151.0515. TEXAS EMISSIONS REDUCTION PLAN SURCHARGE. (a) In this section, "equipment" includes all off-road, heavy-duty diesel equipment classified as construction equipment, other than implements of husbandry used solely for agricultural purposes, including:

- (1) pavers;
- (2) tampers/rammers;
- (3) plate compactors;
- (4) concrete pavers;
- (5) rollers;
- (6) scrapers;
- (7) paving equipment;
- (8) surface equipment;
- (9) signal boards/light plants;
- (10) trenchers;
- (11) bore/drill rigs;
- (12) excavators;
- (13) concrete/industrial saws;
- (14) cement and mortar mixers;
- (15) cranes;
- (16) graders;
- (17) off-highway trucks;
- (18) crushing/processing equipment;
- (19) rough terrain forklifts;
- (20) rubber tire loaders;
- (21) rubber tire tractors/dozers;
- (22) tractors/loaders/backhoes;
- (23) crawler tractors/dozers;
- (24) skid steer loaders;
- (25) off-highway tractors; and
- (26) Dumpsters/tenders.

(b) In each county in this state, a surcharge is imposed on the retail sale, lease, or rental of new or used equipment in an amount equal to 0.5 percent of the sale price or the lease or rental amount.

(c) The surcharge shall be collected at the same time and in the same manner and shall be administered and enforced in the same manner as the tax imposed under this subchapter. The comptroller shall adopt any additional procedures needed for the collection, administration, and enforcement of the surcharge authorized by this section and shall deposit all remitted surcharges to the credit of the Texas emissions reduction plan fund.

(d) This section expires September 30, 2008.

SECTION 3. Subchapter B, Chapter 152, Tax Code, is amended by adding Section 152.0215 to read as follows:

Sec. 152.0215. TEXAS EMISSIONS REDUCTION PLAN SURCHARGE. (a) A surcharge is imposed on every retail sale or lease of every on-road diesel motor vehicle that is over 14,000 pounds and is of a model year 1996 or earlier and that is sold or leased in this state. The amount of the surcharge is five percent of the total consideration.

(b) The surcharge shall be collected at the same time and in the same manner and shall be administered and enforced in the same manner as the tax imposed under this chapter. The comptroller by rule shall adopt any additional procedures needed for the collection, administration, and enforcement of the surcharge authorized by this section and shall deposit all remitted surcharges to the credit of the Texas emissions reduction plan fund.

(c) This section expires September 30, 2008.

SECTION 4. Section 153.203, Tax Code, is amended to read as follows:

Sec. 153.203. EXCEPTIONS. (a) The tax imposed by this subchapter does not apply to:

(1) diesel fuel delivered by a permitted supplier to a common or contract carrier, oceangoing vessel (including ship, tanker, or boat), or barge for export from this state, if the diesel fuel is moved forthwith outside this state;

(2) diesel fuel sold by a permitted supplier to the federal government for its exclusive use;

(3) diesel fuel sold or delivered by a permitted supplier to another permitted supplier or to the bulk storage facility of an agricultural bonded user, or dyed diesel fuel sold or delivered by a permitted supplier to the bulk storage facility of a dyed diesel fuel bonded user, to the bulk storage facility of a diesel tax prepaid user, or to a purchaser who provides a signed statement as provided by Section 153.205 of this code, but not including a delivery of tax-free diesel fuel into the fuel supply tanks of a motor vehicle, except for a motor vehicle owned by the federal government;

(4) diesel fuel sold or delivered by a permitted supplier into the storage facility of a permitted aviation fuel dealer, from which diesel fuel will be sold or delivered solely into the fuel supply tanks of aircraft or aircraft servicing equipment;

(5) diesel fuel sold or delivered by a permitted supplier into fuel supply tanks of railway engines, motorboats, or refrigeration units or other stationary equipment powered by a separate motor from a separate fuel supply tank;

(6) kerosene when delivered by a permitted supplier into a storage facility at a retail business from which all deliveries are exclusively for heating, cooking, lighting, or similar nonhighway use;

(7) diesel fuel sold or delivered by one aviation fuel dealer to another aviation fuel dealer who will deliver the diesel fuel exclusively into the supply tanks of aircraft or aircraft servicing equipment;

(8) diesel fuel sold by a permitted supplier to a public school district in this state for its exclusive use;

(9) diesel fuel sold by a permitted supplier to a commercial transportation company that provides public school transportation services to a school district under Section 34.008, Education Code, and used by the company exclusively to provide those services; or

(10) diesel fuel sold by a permitted supplier to a person, other than a political subdivision, who owns, controls, operates, or manages a commercial motor vehicle as defined by Section 548.001, Transportation Code, if the fuel:

(A) is delivered exclusively into the fuel supply tank of the commercial motor vehicle; and

(B) is used exclusively to transport passengers for compensation or hire between points in this state on a fixed route or schedule.

(b) The tax imposed by this subchapter does not apply to the volume of water that is blended together with taxable diesel fuel when the finished product sold or used is clearly identified on the retail pump, storage tank, and sales invoice as a combination of diesel fuel and water.

SECTION 5. Subchapter B, Chapter 156, Tax Code, is amended by adding Section 156.054 to read as follows:

Sec. 156.054. TEXAS EMISSIONS REDUCTION PLAN SURCHARGE.

(a) In this section, "nonattainment area" and "affected county" have the meanings assigned by Section 386.001, Health and Safety Code.

(b) A person owning, operating, managing, or controlling a hotel located in a nonattainment area or an affected county shall collect a surcharge imposed by this section.

(c) A \$1 surcharge is imposed on a person for each day that the person has the right to use or possess a room in a hotel that is ordinarily used for sleeping.

(d) Sections 156.101, 156.102, and 156.103 do not apply to the surcharge authorized by this section.

(e) The surcharge shall be collected at the same time and in the same manner and shall be administered and enforced in the same manner as the tax imposed under this subchapter. The comptroller shall adopt any additional procedures needed for the collection, administration, and enforcement of the surcharge authorized by this section and shall deposit all remitted surcharges to the credit of the Texas emissions reduction plan fund.

(f) This section expires September 30, 2008.

SECTION 6. Section 224.153, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) A motor vehicle displaying the "low-emissions vehicle" insignia authorized by Section 502.186 in an easily readable location on the back of the vehicle is entitled to travel in a preferential car pool or high occupancy vehicle lane designated under this section regardless of the number of occupants in the vehicle. This subsection expires August 31, 2008.

SECTION 7. Section 431.073, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) A motor vehicle displaying the "low-emissions vehicle" insignia authorized by Section 502.186 in an easily readable location on the back of the vehicle is entitled to travel in a high occupancy vehicle lane designated under this section regardless of the number of occupants in the vehicle. This subsection expires August 31, 2008.

SECTION 8. Subchapter D, Chapter 502, Transportation Code, is amended by adding Section 502.1675 to read as follows:

Sec. 502.1675. TEXAS EMISSIONS REDUCTION PLAN SURCHARGE.

(a) In addition to the registration fees charged under Section 502.167, a surcharge is imposed on the registration of a truck-tractor or commercial motor vehicle under that section in an amount equal to 10 percent of the total fees due for the registration of the truck-tractor or commercial motor vehicle under that section.

(b) The county tax assessor-collector shall remit the surcharge collected under this section to the comptroller at the time and in the manner prescribed by the comptroller for deposit in the Texas emissions reduction plan fund.

(c) This section expires August 31, 2008.

SECTION 9. Subchapter D, Chapter 502, Transportation Code, is amended by adding Section 502.186 to read as follows:

Sec. 502.186. "LOW-EMISSIONS VEHICLE" INSIGNIA FOR CERTAIN MOTOR VEHICLES. (a) At the time of registration or reregistration of the motor vehicle, the department shall issue a specially designed "low-emissions vehicle" insignia for a motor vehicle that meets qualifications for the light-duty motor vehicle purchase or lease incentives under Subchapter D, Chapter 386, Health and Safety Code.

(b) The department shall issue a "low-emissions vehicle" insignia under this section without the payment of any additional fee to a person who:

(1) applies to the department on a form provided by the department; and

(2) submits proof that the motor vehicle being registered is a vehicle described by Subsection (a).

(c) This section expires August 31, 2008.

SECTION 10. Section 548.256, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) The inspection station shall collect a fee of \$60 for each inspection performed under this section and remit the fee to the department. The department shall remit all fees collected under this subsection to the comptroller for deposit in the Texas emissions reduction plan fund.

SECTION 11. Subchapter H, Chapter 548, Transportation Code, is amended by adding Section 548.5055 to read as follows:

Sec. 548.5055. TEXAS EMISSIONS REDUCTION PLAN FEE. (a) In this section, "nonattainment area" and "affected county" have the meanings assigned by Section 386.001, Health and Safety Code.

(b) In addition to other fees required by this subchapter, to fund the Texas emissions reduction plan established under Chapter 386, Health and Safety Code, the department shall collect, for every motor vehicle required to be inspected under this chapter, a fee of:

(1) \$1, if the vehicle being inspected is not registered in a nonattainment area or an affected county in this state; or

(2) \$5, if the vehicle being inspected is registered in a nonattainment area or an affected county in this state.

(c) The department shall remit fees collected under this section to the comptroller at the time and in the manner prescribed by the comptroller for deposit in the Texas emissions reduction plan fund.

(d) This section expires August 31, 2008.

SECTION 12. (a) Not later than the 45th day after the effective date of this Act, the Texas Natural Resource Conservation Commission shall adopt all necessary rules required to implement programs established under this Act.

(b) Not later than the 45th day after the effective date of this Act, the comptroller of public accounts shall adopt all rules necessary to enable the comptroller to carry out the comptroller's duties under this Act.

(c) Not later than the 45th day after the effective date of this Act, the Public Utility Commission of Texas shall adopt all rules necessary to carry out its duties under this Act.

(d) A municipality or county required to establish procedures under Section 388.003(c), Health and Safety Code, as added by this Act, shall establish the procedures not later than September 1, 2002.

SECTION 13. (a) Except as provided by Subsection (b) of this section, not later than August 1, 2001, if this Act takes immediate effect, or the effective date of this Act if this Act does not take immediate effect, the Texas Natural Resource Conservation Commission and the comptroller of public accounts shall adopt rules necessary to implement the diesel emissions reduction incentive program established under Subchapter C, Chapter 386, Health and Safety Code, as added by this Act.

(b) Not later than September 1, 2001, the Texas Natural Resource Conservation Commission, as required by Section 386.103, Health and Safety Code, as added by this Act, shall adopt criteria for setting priorities for projects eligible for grants under Subchapter C, Chapter 386, Health and Safety Code, as added by this Act.

(c) Not later than August 1, 2002, the Texas Natural Resource Conservation Commission and the comptroller of public accounts shall adopt rules necessary to implement the motor vehicle purchase or lease incentive program established under Subchapter D, Chapter 386, Health and Safety Code, as added by this Act.

(d) Not later than August 1, 2002, the Texas Natural Resource Conservation Commission shall publish the first annual list of vehicles eligible for light-duty motor vehicle purchase or lease incentives, as required by Section 386.156, Health and Safety Code, as added by this Act.

SECTION 14. The vehicle purchase or lease incentives authorized by Sections 386.113 and 386.153, Health and Safety Code, as added by this Act, apply only to the sale or lease of a vehicle that occurs on or after January 1, 2002.

SECTION 15. (a) The Texas Natural Resource Conservation Commission shall develop and sponsor a contest in the state's public schools to select the best student design for the "low-emissions vehicle" insignia authorized by Section 502.186, Transportation Code, as added by this Act. Not later than January 1, 2002, the commission shall provide to each public school in the state a contest packet containing rules and procedures for participating in the contest, an explanation of the criteria the commission will use in selecting the best design, and a deadline for the submission of student designs. The commission shall select and announce the winner of the contest not later than the 30th day after the contest submission deadline. The commission may publicize and otherwise promote the contest and the winning design.

(b) The Texas Natural Resource Conservation Commission shall make the "low-emissions vehicle" insignia available to the county tax assessor-collector of each county in the state not later than the 45th day after the date on which the winning design is selected and announced. The county tax assessor-collector of each county in the state shall begin issuing the "low-emissions vehicle" insignia to persons who qualify for the insignia not later than the 10th working day after the date the insignia are available.

SECTION 16. (a) In making the initial appointments to the Texas Emissions Reduction Plan Advisory Board as created by Section 386.058, Health and Safety Code, as added by this Act, the appointing authorities, by mutual agreement, shall designate their appointees so that seven members' terms expire February 1, 2002, and eight members' terms expire February 1, 2003.

(b) Appointments to the advisory board shall be made not later than July 1, 2001, if this Act takes immediate effect, or not later than the effective date of this Act, if this Act does not take immediate effect.

SECTION 17. As soon as practicable after the effective date of this Act, the governor shall appoint members to the Texas Council on Environmental Technology, as created by Section 387.002, Health and Safety Code, as added by this Act. In making the initial appointments, the governor shall designate the appointees so that three members' terms expire February 1, 2003, four members' terms expire February 1, 2005, and four members' terms expire February 1, 2007.

SECTION 18. Not later than the 30th day after the adoption of rules governing the new technology research and development program established under Chapter 387, Health and Safety Code, as added by this Act, the Texas Council on Environmental Technology shall issue requests for proposals for projects to be funded under the new technology research and development program.

SECTION 19. On the effective date of this Act, the Texas Natural Resource Conservation Commission shall submit to the United States Environmental Protection Agency a revision to the state implementation plan that deletes the requirements of the construction shift and the early purchase of Tier 2 and Tier 3 equipment and adds the provisions of this Act.

SECTION 20. (a) Notwithstanding any Act of the 77th Legislature, Regular Session, 2001, that purports to abolish all funds and accounts created or re-created in the state treasury by another Act of the 77th Legislature, Regular Session, 2001, the Texas emissions reduction plan fund created by Subchapter F, Chapter 386, Health and Safety Code, as added by this Act, and the environmental research fund created by Section 387.008, Health and Safety Code, as added by this Act, are accounts in the general revenue fund and the accounts and money deposited to the accounts are exempt from any Act of the 77th Legislature, Regular Session, 2001, that purports to abolish all funds and accounts created or re-created by another Act of the 77th Legislature, Regular Session, 2001, and to require the deposit of money that would be deposited to the credit of a special account or fund be deposited to the credit of the unobligated portion of the general revenue fund unless the fund, account, or dedication is exempted under that Act.

(b) This section prevails over any other Act of the 77th Legislature, Regular Session, 2001, regardless of the relative dates of enactment, that purports to abolish all funds and accounts created or re-created in the state treasury by another Act of the 77th Legislature, Regular Session, 2001, and to require the deposit of money that would be deposited to the credit of a special account or fund be deposited to the credit of the unobligated portion of the general revenue fund unless the fund, account, or dedication is exempted under that Act.

SECTION 21. Section 386.002, Health and Safety Code, as added by this Act notwithstanding, the Texas Natural Resource Conservation Commission shall submit the final biennial plan report required by Section 386.057, Health and Safety Code, as added by this Act, to the legislature not later than December 1, 2008.

SECTION 22. The expiration of Sections 151.0515, 152.0215, and 156.054, Tax Code, as added by this Act, does not affect an obligation that was incurred, a violation that occurred, or an offense that was committed under those sections before the expiration date of those sections. An obligation incurred, a violation that occurred, or an offense committed before the expiration date of those sections is governed by the

law in effect at the time the obligation was incurred, the violation occurred, or the offense was committed, and the former law is continued in effect after the expiration date for that purpose. For purposes of this section, a violation occurs or an offense is committed before the expiration date of those sections if any element of the violation or offense occurs before that date.

SECTION 23. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

Floor Amendment No. 1

Amend **CSSB 5** (house committee printing) as follows:

(1) In Subsection (b), Section 1 of the bill, proposed Subdivision (4), Section 386.101, Health and Safety Code, strike "or an implement of husbandry that is used exclusively for agricultural purposes" (page 14, lines 6-8).

(2) In Subsection (b), Section 1 of the bill, proposed Subsection (b), Section 386.202, Health and Safety Code, strike ", replacement, and recycling" (page 32, line 10).

(3) In Subsection (b), Section 1 of the bill, strike proposed Subsections (b) and (c), Section 386.251, Health and Safety Code (page 33, line 24, through page 34, line 7) and substitute:

(b) The fund is administered by the comptroller for the benefit of the Texas emissions reduction plan established under this chapter. The fund is exempt from the application of Section 403.095, Government Code. Interest earned on the fund shall be credited to the fund.

(c) The fund consists of:

(1) the contributions, fees, and surcharges under:

(A) Section 386.056;

(B) Sections 151.0515, 152.0215, and 156.054, Tax Code; and

(C) Sections 502.1675, 548.256(c), and 548.5055, Transportation Code; and

(2) grant money recaptured under Section 386.111(d).

(4) In Subsection (b), Section 1 of the bill, proposed Subsection (c), Section 388.003, Health and Safety Code, strike "or county" (page 42, line 14).

(5) In Subsection (b), Section 1 of the bill, proposed Subsection (f), Section 388.003, Health and Safety Code, strike "and county" and substitute ", and each county that has established procedures under Subsection (d)," (page 43, line 24).

(6) In Subsection (d), Section 12 of the bill, strike "or county" (page 56, line 4).

(7) In Section 14 of the bill, strike "January" and substitute "August" (page 57, line 8).

(8) In Section 19 of the bill, strike "On the effective date of this Act," and substitute "Not later than October 1, 2001," (page 58, line 27).

(9) At the end of Section 19 of the bill (page 59, line 5), add:

The commission shall include with the revision a report on the effectiveness of the Texas emissions reduction plan in delivering emissions reductions to the degree sufficient to replace the requirements of the construction shift and the early purchase of Tier 2 and Tier 3 equipment.

Amendment No. 2

Amend Floor Amendment No. 1 to **CSSB 5** as follows:

- (1) On page 1, line 22, of the amendment strike "and 548.5055"
- (2) Add the following language to the amendment:
Strike Section 11 of **CSSB 5**.

Amendment No. 5

Amend Floor Amendment No. 1 to **CSSB 5** as follows:

- (1) On page 1, line 20, strike "and 156.054"
- (2) Add the following language to the amendment:
 - (a) Strike Section 5 of the bill.
 - (b) On page 60, line 10 of the bill, strike "and 156.054,"

Floor Amendment No. 6

Amend Floor Amendment No. 1 to **CSSB 5** by adding the following text to the amendment:

Amend **CSSB 5** in Section 10 of the bill by striking proposed Subsection (c), Section 548.256, Transportation Code (house committee printing, page 54, lines 22-26), and substituting:

(c) The inspection station shall collect a fee of \$150 for each inspection performed under this section and shall remit the fee to the department. Of each fee collected, the inspection station may retain \$5 to cover administrative costs. The department shall remit all fees collected under this subsection to the comptroller for deposit in the Texas emissions reduction plan fund. This subsection expires August 31, 2008.

Floor Amendment No. 9

Amend **CSSB 5** (House committee printing) as follows:

(1) In SECTION 1(b) of the bill, at the end of proposed Section 386.155, Health and Safety Code (page 28, line 8), add "The manufacturer may supplement the list provided to the commission under this section as necessary to include additional new vehicle models the manufacturer intends to sell in this state during the model year.".

(2) In SECTION 1(b) of the bill, at the end of proposed Section 386.156(a), Health and Safety Code (page 28, line 12), add "The commission shall publish and provide to the comptroller supplements to that list as necessary to include additional new vehicle models listed in a supplement to the original list provided by a manufacturer under Section 386.155.".

(3) In SECTION 1(b) of the bill, in the heading to proposed Section 386.157, Health and Safety Code (page 28, line 16), strike "LABEL" and substitute "BROCHURE".

(4) In SECTION 1(b) of the bill, in proposed Section 386.157(a), Health and Safety Code (page 28, lines 19 through 27), strike all following "manufacturer" and substitute "shall publish and make available to its dealers, for distribution to the dealers' customers, a brochure that includes the list of eligible motor vehicles prepared under Section 386.156 and the emissions and air pollution ratings, not including fuel efficiency, for each eligible motor vehicle based on data from the United States Environmental Protection Agency's Green Vehicle Guide. The brochure must also clearly present information on the emissions and air pollution ratings, not including

fuel efficiency, for each motor vehicle on the list of eligible motor vehicles prepared by the manufacturer under Section 386.155, based on the motor vehicle's BIN certification number. The brochure must indicate where the BIN certification information is located on each motor vehicle and must clearly explain how to interpret that information. The brochure must also tell the consumer how to obtain further information from the United States Environmental Protection Agency's Green Vehicle Guide. The commission by rule shall establish standards for compliance with this subsection.

(5) In SECTION 1(b) of the bill, at the end of proposed Section 386.159(b), Health and Safety Code (page 29, line 24), add: To help a consumer to make informed new vehicle purchase decisions, the notice must also include a statement that information on eligible motor vehicles and on the emissions and air pollution ratings, not including fuel efficiency, for eligible motor vehicles may be obtained from the commission or from new motor vehicle dealers and leasing agents. The notice must state where the BIN certification information is located on each eligible motor vehicle, must clearly explain how to interpret that information, and must tell the consumer how to obtain further information from the United States Environmental Protection Agency's Green Vehicle Guide.

Floor Amendment No. 11

Amend **CSSB 5** (House committee printing) in SECTION 1(b) of the bill, proposed Section 386.053(c), Health and Safety Code (page 5, line 21), after the period add "The public meeting shall be held in the affected SIP area, and if the guidelines affect more than one SIP area, a public meeting shall be held in each affected SIP area affected by the guidelines."

Floor Amendment No. 12

Amend **CSSB 5** (House committee report) in SECTION 1(b) of the bill, proposed Section 386.054(a), Health and Safety Code (page 6, line 20), by striking "annually" and substituting "semi-annually".

Floor Amendment No. 15

Amend **CSSB 5** as follows:

(1) In SECTION 3 of the bill, proposed Subsection (a), Section 152.0215, Tax Code (House Committee Printing, page 49, line 17), strike "five" and substitute "2.5".

(2) Add a new SECTION to the bill, numbered appropriately, to read as follows: SECTION _____. Subchapter H, Chapter 548, Transportation Code, is amended by adding Section 548.5055 to read as follows:

Sec. 548.5055. TEXAS EMISSION REDUCTION PLAN FEE. (a) In addition to other fees required by this subchapter, to fund the Texas emissions reduction plan established under Chapter 386, Health and Safety Code, the department shall collect for every commercial motor vehicle required to be inspected under Subchapter D, a fee of \$10.

(b) The department shall remit fees collected under this section to the comptroller at the time and in the manner prescribed by the comptroller for deposit in the Texas emission reduction plan fund.

(c) This section expires August 31, 2008.

Floor Amendment No. 16

Amend **CSSB 5** (House Committee Printing) as follows:

(1) On page 38, line 6, after 'commission' add 'and conducted in an independent and objective manner.'

Floor Amendment No. 20

Amend **CSSB 5** (House committee printing) as follows:

(1) In SECTION 1(b) of the bill, at the end of proposed Section 387.007, Health and Safety Code (page 39, line 3), between "money" and the period, add ", except that the council shall require provisions for recapturing grant money for noncompliance with grant requirements. Grant money recaptured under the contract provision shall be deposited in the fund and reallocated for other projects under this subchapter".

(2) In SECTION 1(b) of the bill, at the end of proposed Section 387.010, Health and Safety Code (page 40, line 1), after the period, add "Using sound science, the report shall detail the costs and actual realized benefits of the program and of each project funded under the program.".

Floor Amendment No. 22

Amend **CSSB 5** as follows:

(1) On page 52, line 1, between "water" and "that", insert a comma and "fuel ethanol, biodiesel, or mixtures thereof".

(2) On page 52, line 1, strike "is" and substitute "are".

(3) On page 52, line 4, between "water" and the period, insert a comma and "fuel ethanol, biodiesel, or mixtures thereof".

Floor Amendment No. 1 on Third Reading

Amend **CSSB 5** on third reading as follows:

(1) In Section 1(b) of the bill, proposed Subdivision (1), Subsection (a), Section 386.252, Health and Safety Code, strike "67 percent" and substitute "72 percent".

(2) In Section 1(b) of the bill, proposed Subdivision (2), Subsection (a), Section 386.252, Health and Safety Code, strike "15 percent" and substitute "10 percent".

Floor Amendment No. 2 on Third Reading

Amend **CSSB 5** on third reading in SECTION 2 of the bill, in added Subsection (b), Section 151.0515, Tax Code (House Committee Printing page 49, line 1), by striking "0.5" and substituting "one".

Floor Amendment No. 3 on Third Reading

Amend **CSSB 5** on third reading by striking the text of 2nd reading Amendment No. 6 and substituting:

Amend **CSSB 5** in Section 10 of the bill by striking proposed Subsection (c), Section 548.256, Transportation Code (house committee printing, page 54, lines 22-26), and substituting:

(c) The inspection station shall collect a fee of \$225 for each inspection performed under this section and shall remit the fee to the department. Of each fee collected, the inspection station may retain \$5 to cover administrative costs.

The department shall remit all fees collected under this subsection to the comptroller for deposit in the Texas emissions reduction plan fund. This subsection expires August 31, 2008.

Floor Amendment No. 4 on Third Reading

Amend Floor Amendment No. 3 on third reading to **CSSB 5** on third reading by adding the following to the end of the amendment:

"The fee imposed by this subsection does not apply to an inspection performed on a vehicle owned by active-duty military personnel and their dependents."

Floor Amendment No. 5 on Third Reading

Amend **CSSB 5** on third reading as follows:

(1) In SECTION 10 of the bill insert proposed subsection (d), Section 548.256, Transportation Code (As amended and passed to third reading, page 54, between line 26 and 27) to read as follows:

(d) A person who is an officer, enlisted person, selectee, or draftee of the Army, Army Reserve, Army National Guard, Air National Guard, Air Force, Air Force Reserve, Navy, Navy Reserve, Marine Corps, Marine Corps Reserve, Coast Guard, or Coast Guard Reserve of the United States, and the spouse and children of such an officer, enlisted person, selectee, or draftee is exempted from the requirements of subsection (c).

The amendments were read.

Senator Brown moved to concur in the House amendments to **SB 5**.

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

Present-not voting: Mr. President.

SENATE RESOLUTION 1174

Senator Ellis offered the following resolution:

SR 1174, Resolving that Senate Rules 12.03 and 12.04 be suspended in part as provided by Senate Rule 12.08 to enable consideration of, and action on, specific matters which may be contained in the Conference Committee Report on **SB 1**.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1 ADOPTED

Senator Ellis called from the President's table the Conference Committee Report on **SB 1**. The Conference Committee Report was filed with the Senate on Tuesday, May 22, 2001.

On motion of Senator Ellis, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

(Senator Brown in Chair)

SENATE BILL 518 WITH HOUSE AMENDMENTS

Senator Lucio called **SB 518** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment No. 1

Amend **SB 518** by inserting the following new SECTION between existing SECTIONS 2 and 3 of the bill (Senate Engrossment page 2, between lines 4 and 5) and renumbering existing SECTIONS 3 and 4 of the bill as SECTIONS 4 and 5:

SECTION 3. Subsection (b), Section 33.006, Education Code, is amended to read as follows:

(b) In addition to a school counselor's responsibility under Subsection (a), the counselor shall:

(1) participate in planning, implementing, and evaluating a comprehensive developmental guidance program to serve all students and to address the special needs of students [~~who are~~]:

(A) who are at risk of dropping out of school, becoming substance abusers, participating in gang activity, or committing suicide; [~~or~~]

(B) who are in need of modified instructional strategies; or

(C) who are gifted and talented, with emphasis on identifying and serving gifted and talented students who are educationally disadvantaged;

(2) consult with a student's parent or guardian and make referrals as appropriate in consultation with the student's parent or guardian;

(3) consult with school staff, parents, and other community members to help them increase the effectiveness of student education and promote student success;

(4) coordinate people and resources in the school, home, and community;

(5) with the assistance of school staff, interpret standardized test results and other assessment data that help a student make educational and career plans; and

(6) deliver classroom guidance activities or serve as a consultant to teachers conducting lessons based on the school's guidance curriculum.

Committee Amendment No. 2

Amend **SB 518** as follows:

On page 1, line 19, after the word, "potential", insert, including the student's interests and career objectives.

The amendments were read.

Senator Lucio moved to concur in the House amendments to **SB 518**.

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

Present-not voting: Mr. 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:

HB 5, HB 7, HB 35, HB 370, HB 374, HB 563, HB 689, HB 803, HB 910, HB 1071, HB 1209, HB 1377, HB 1495, HB 1537, HB 1575, HB 1621, HB 1639, HB 1676, HB 1723, HB 1748, HB 1813, HB 1820, HB 1948, HB 2028, HB 2046, HB 2065, HB 2097, HB 2134, HB 2144, HB 2156, HB 2249, HB 2270, HB 2273, HB 2388, HB 2574, HB 2588, HB 2673, HB 2681, HB 2687, HB 2718, HB 2719, HB 2728, HB 2751, HB 2786, HB 2798, HB 2881, HB 2888, HB 2987, HB 2989, HB 2994, HB 2997, HB 3040, HB 3071, HB 3162, HB 3543, HB 3589, HB 3613, HB 3634, HB 3687, HB 3691, HB 3694, HB 3698, HCR 144, HCR 209, HCR 260, HCR 269, HCR 282, HCR 300, HCR 301, HCR 302, HCR 303, HCR 305, HJR 44, HB 78, HB 83, HB 612, HB 627, HB 674, HB 694, HB 715, HB 779, HB 842, HB 1072, HB 1137, HB 1194, HB 1276, HB 1316, HB 1387, HB 1426, HB 1440, HB 1592, HB 1612, HB 1614, HB 2331, HB 2347, HB 2382, HB 2391, HB 2400, HB 2405, HB 2408, HB 2413, HB 2415, HB 2419, HB 2492, HB 2558, HB 2559, HB 2579, HB 2806, HB 3001, HB 3161, HB 3333, HB 3349, HB 3351, HB 3359, HB 3364, HB 3378, HB 3387, HB 3465, HB 3504, HB 3526, HB 3627, HB 3628, HB 3629, HB 3630, HB 3633, HB 3635, HB 3643, HB 3646, HCR 41, HCR 102, HCR 109, HCR 118, HCR 174, HCR 177, HCR 200, HCR 214, HCR 223, HCR 226, HCR 227, HCR 236, HCR 245, HCR 248, HCR 250, HCR 254, HCR 255, HCR 256, HCR 296, HB 15, HB 31, HB 99, HB 119, HB 195, HB 218, HB 249, HB 280, HB 298, HB 407, HB 412, HB 434, HB 451, HB 456, HB 468, HB 485, HB 489, HB 497, HB 539, HB 567, HB 691, HB 1268, HB 1599, HB 1610, HB 1823, HB 1880, HB 2247, HB 2265, HB 2279, HB 2327, HB 2334, HB 2423, HB 2475, HB 2482, HB 2488, HB 2529, HB 2587, HB 2593, HB 2638, HB 2650, HB 2658, HB 2682, HB 2706, HB 2731, HB 2756, HB 2758, HB 2760, HB 2761, HB 2763, HB 2767, HB 2769, HB 2780, HB 2782, HB 2784, HB 2788, HB 2811, HB 2812, HB 2813, HB 3153, HB 3498, HB 3603, HB 3663, HB 3664, HB 3670, HB 3671, HB 3676, HB 3677, HB 3693, HB 3695, HCR 267.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 24, 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 206, Granting Darcie R. Barclay permission to sue the state and The University of Texas Medical Branch, et. al.

HCR 211, Granting H. C. "Bud" Gibson permission to sue the state and the Texas Natural Resource Conservation Commission.

HCR 221, Granting MICA Corporation permission to sue the state and the Texas Department of Transportation.

HCR 294, Instructing the enrolling clerk of the house to make technical corrections to House Bill No. 217.

THE HOUSE HAS REFUSED TO CONCUR IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

HB 152

House Conferees: Brown, Fred - Chair/Morrison/Rangel/Uher/West, George "Buddy"

HB 259

House Conferees: Lewis, Glenn - Chair/Chavez/Davis, Yvonne/McClendon/Thompson

HB 328

House Conferees: Gallego - Chair/Raymond/Sadler/Swinford/Walker

THE HOUSE HAS GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

SB 2

House conferees: Lewis, Ron - Chair/Cook/Counts/King, Tracy/Puente

SB 450

House conferees: Gallego - Chair/Chisum/Hochberg/Sadler/Walker

SB 732

House conferees: Farabee - Chair/Hilderbran/Homer/Lewis, Glenn/Ramsay

SB 1156

House conferees: Coleman - Chair/Eiland/Gray/Janek/Keffer

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 1166 (viva-voce vote)

HJR 97 (141 Ayes, 0 Nays, 1 Present Not Voting)

SB 65 (viva-voce vote)

SB 303 (viva-voce vote)

SB 304 (viva-voce vote)

SB 577 (121 Ayes, 13 Nays, 1 Present Not Voting)

SB 583 (viva-voce vote)

SB 684 (141 Ayes, 0 Nays, 1 Present Not Voting)

SB 846 (viva-voce vote)

SB 1074 (viva-voce vote)

SB 1472 (141 Ayes, 0 Nays, 1 Present Not Voting)

SB 1596 (139 Ayes, 0 Nays, 1 Present Not Voting)

THE HOUSE HAS RECOMMITTED THE FOLLOWING MEASURES TO CONFERENCE COMMITTEE:

HB 236 (viva-voce vote)

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE ON HOUSE BILL 328

Senator Madla called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 328** 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 328** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Madla, Chair; Staples, Bivins, Lucio, and Fraser.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 846 ADOPTED

Senator Cain called from the President's table the Conference Committee Report on **SB 846**. The Conference Committee Report was filed with the Senate on Friday, May 18, 2001.

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

SENATE BILL 654 WITH HOUSE AMENDMENT

Senator Staples called **SB 654** 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 654** as follows:

(1) In SECTION 1 of the bill, in amended Subsection (b), Article 62.02, Code of Criminal Procedure (house committee report, page 1, line 15), strike "a photograph of the person" and substitute "a recent color photograph or, if possible, electronic digital image of the person".

(2) Strike SECTION 3 of the bill (house committee report, page 3, lines 7-19) and substitute the following:

SECTION 3. The requirements under Subsection (b), Article 62.02, Code of Criminal Procedure, as amended by this Act, regarding the offender's photograph or digital image and the offender's licensing information apply to the initial registration form for an offender who first registers on or after the effective date

of this Act. For an offender who first registers before the effective date of this Act, the requirements apply to the registration form as modified when the offender first verifies registration on or after the effective date. Regardless of the date of a sex offender's initial registration, all registration forms modified on verification of registration on or after the effective date of this Act must contain the offender's photograph or digital image and licensing information as required by Subsection (b), Article 62.02, Code of Criminal Procedure, as amended by this Act.

The amendment was read.

On motion of Senator Staples, the Senate concurred in the House amendment to **SB 654** by a viva voce vote.

SENATE BILL 437 WITH HOUSE AMENDMENTS

Senator Staples called **SB 437** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 437** (house committee printing) by adding an appropriately numbered SECTION to read as follows and by renumbering existing SECTIONS accordingly:

SECTION _____. Section 31.04, Penal Code, is amended by adding Subsection (g) to read as follows:

(g) It is a defense to prosecution under this section that:

(1) the defendant secured the performance of the service by giving a post-dated check or similar sight order to the person performing the service; and

(2) the person performing the service or any other person presented the check or sight order for payment before the date on the check or sight order.

Floor Amendment No. 2

Amend **SB 437** (house committee printing) as follows:

SECTION _____. Section 32.32(c), Penal Code, is amended to read as follows:

(c) An offense under this section is:

(1) a Class C misdemeanor if the value of the property or the amount of credit is less than \$50;

(2) a Class B misdemeanor if the value of the property or the amount of credit is \$50 or more but less than \$500;

(3) a Class A misdemeanor if the value of the property or the amount of credit is \$500 or more but less than \$1,500;

(4) a state jail felony if the value of the property or the amount of credit is \$1,500 or more but less than \$20,000;

(5) a felony of the third degree if the value of the property or the amount of credit is \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the value of the property or the amount of credit is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the value of the property or the amount of credit is \$200,000 or more.

The amendments were read.

On motion of Senator Staples, the Senate concurred in the House amendments to **SB 437** by a viva voce vote.

SENATE BILL 1536 WITH HOUSE AMENDMENTS

Senator Madla called **SB 1536** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 1536** by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.02171 and 531.02172 to read as follows:

Sec. 531.02171. **TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES PILOT PROGRAMS.** (a) In this section:

(1) "Health professional" means:

(A) a physician;

(B) an individual who is licensed or certified in this state to perform health care services and who is authorized to assist a physician in providing telemedicine medical services that are delegated and supervised by the physician; or

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

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

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

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

(b) The commission shall establish pilot programs in designated areas of this state under which the commission, in administering government-funded health programs, may reimburse a health care professional participating in the pilot program for telemedicine medical services or telehealth services authorized under the licensing law applicable to the health care professional. Each pilot program established before January 1, 2003, must provide services in areas of this state that are not more than 150 miles from the border between this state and the United Mexican States.

(c) In developing and operating a pilot program under this section, the commission shall:

(1) solicit and obtain support for the program from local officials and the medical community;

(2) focus on enhancing health outcomes in the area served by the pilot program through increased access to medical or health care services, including:

(A) health screenings;

(B) prenatal care;

(C) medical or surgical follow-up visits;

(D) periodic consultation with specialists regarding chronic disorders;

(E) triage and pretransfer arrangements; and

(F) transmission of diagnostic images or data;

(3) establish quantifiable measures and expected health outcomes for each authorized telemedicine medical service or telehealth service;

(4) consider condition-specific applications of telemedicine medical services or telehealth services, including applications for:

- (A) pregnancy;
- (B) diabetes;
- (C) heart disease; and
- (D) cancer; and

(5) demonstrate that the provision of services authorized as telemedicine medical services or telehealth services will not adversely affect the delivery of traditional medical services or other health care services within the area served by the pilot program.

Sec. 531.02172. TELEMEDICINE ADVISORY COMMITTEE. (a) The commissioner shall establish an advisory committee to assist the commission in:

(1) evaluating policies for telemedical consultations under Section 531.0217;

(2) evaluating policies for telemedicine medical service or telehealth service pilot programs established under Section 531.02171;

(3) ensuring the efficient and consistent development and use of telecommunication technology for telemedical consultations and telemedicine medical services or telehealth services reimbursed under government-funded health programs;

(4) monitoring the type of programs receiving reimbursement under Sections 531.0217 and 531.02171; and

(5) coordinating the activities of state agencies concerned with the use of telemedical consultations and telemedicine medical services or telehealth services.

(b) The advisory committee must include:

(1) representatives of health and human services agencies and other state agencies concerned with the use of telemedical consultations in the Medicaid program and the state child health plan program, including representatives of:

- (A) the commission;
- (B) the Texas Department of Health;
- (C) the Center for Rural Health Initiatives;
- (D) the Telecommunications Infrastructure Fund Board;
- (E) the Texas Department of Insurance;
- (F) the Texas State Board of Medical Examiners;
- (G) the Board of Nurse Examiners; and
- (H) the Texas State Board of Pharmacy;

(2) representatives of health science centers in this state;

(3) experts on telemedicine, telemedical consultation, and telemedicine medical services; and

(4) representatives of consumers of health services provided through telemedical consultations and telemedicine medical services.

(c) A member of the advisory committee serves at the will of the commissioner.
SECTION _____. Section 57.042, Utilities Code, is amended by amending Subdivision (11) and adding Subdivision (12) to read as follows:

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

(A) compressed digital interactive video, audio, or data transmission;
 (B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and
 (C) other technology that facilitates access to health care services or medical specialty expertise.

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

(A) compressed digital interactive video, audio, or data transmission;
 (B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and
 (C) other technology that facilitates access to health care services or medical specialty expertise[:

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

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

SECTION _____. Subsections (a) and (b), Section 57.047, Utilities Code, are amended to read as follows:

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

SECTION _____. Subchapter C, Chapter 57, Utilities Code, is amended by adding Section 57.0471 to read as follows:

Sec. 57.0471. GRANTS TO CERTAIN HEALTH CARE FACILITIES. A physician, health care professional, or health care facility providing telemedicine medical services or telehealth services and participating in a pilot program under Section 531.02171, Government Code, is eligible to receive a grant under Section 57.047.

SECTION _____. Subsection (h), Section 531.0217, Government Code, is repealed.

SECTION _____. (a) Not later than December 31, 2001, the commissioner of health and human services shall establish the telemedicine advisory committee as required by Section 531.02172, Government Code, as added by this Act.

(b) Not later than September 1, 2003, the telemedicine advisory committee established under Section 531.02172, Government Code, as added by this Act, shall prepare a report relating to the implementation of the pilot programs established under Section 531.02171, Government Code, as added by this Act, and shall provide the report to the governor, lieutenant governor, speaker of the house of representatives, and appropriate standing committees of the senate and house of representatives.

SECTION _____. The advisory committee established under Subsection (h), Section 531.0217, Government Code, is abolished on the effective date of this Act.

Floor Amendment No. 2

Amend **SB 1536** (House Committee Printing) following proposed Subsection (b) of Section 531.055, Government Code (page 1, between lines 17 and 18), by inserting the following:

(c) Notwithstanding an eligibility requirement prescribed by any other law or rule, the commission may establish requirements for a person to receive services provided through a pilot project under this section.

(d) Receipt of services provided through a pilot project under this section does not entitle the recipient to other services under a government-funded health program.

(e) The commission may set a maximum enrollment limit for a pilot project established under this section.

Floor Amendment No. 3

Amend **SB 1536** (House Committee Printing) in Section 531.055(b), Government Code, as added by SECTION 1 of the bill (page 1, line 14), by striking "must" and substituting "may".

Floor Amendment No. 1 on Third Reading

Amend **SB 1536** on third reading by amending the House floor amendment No. 1 by Puente as follows:

(1) Create subsection with existing Puente amendment language by inserting "(a)" between "FACILITIES." and "A" on page 6 line 15 of the amendment.

(2) Insert new subsection between lines 20 and 21 of page 6 of the amendment as follows:

"(b) The physician, health care professional, or health care facility providing telemedicine medical services or telehealth services and participating in a pilot program under Section 531.02171, Government Code, is not eligible to receive private network services under Section 58.253(a), except with respect to a project that would have been eligible to be funded by the telecommunications infrastructure fund under this subchapter as it existed on January 1, 2000."

Floor Amendment No. 2 on Third Reading

Amend **SB 1536** on third reading by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS of the bill accordingly:

SECTION __. Chapter 35, Health and Safety Code, is amended by adding Section 35.0041 to read as follows:

Sec. 35.0041. PARTICIPATION AND REIMBURSEMENT OF TELEMEDICINE MEDICAL SERVICE PROVIDERS. (a) The department by rule shall develop and implement policies permitting reimbursement of a provider for services under the program performed using telemedicine medical services.

(b) The policies must provide for reimbursement of:

(1) providers using telemedicine medical services and telehealth services in a cost-effective manner that ensures the availability to a child with special health care needs of services appropriately performed using telemedicine medical services and telehealth services that are comparable to the same types of services available to that child without use of medical services and telehealth services;

(2) a provider for a service performed using telemedicine medical services and telehealth services at an amount equal to the amount paid to a provider for performing the same service without using telemedicine medical services and telehealth services;

(3) multiple providers of different services who participate in a single telemedicine medical services or telehealth services session for a child with special health care needs, if the department determines that reimbursing each provider for the session is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services and telehealth services, including the costs of transportation and lodging and other direct costs; and

(4) Providers using telemedicine medical services and telehealth services included in the school health and related services program.

(c) In developing and implementing the policies required by this section, the department shall consult with:

(1) The University of Texas Medical Branch at Galveston;

(2) Texas Tech University Health Sciences Center;

(3) the Health and Human Services Commission, including the state Medicaid office;

(4) providers of telemedicine medical services and telehealth services hub sites in this state;

(5) providers of services to children with special health care needs; and

(6) representatives of consumer or disability groups affected by changes to services for children with special health care needs.

(d) This section applies to services for which coverage is provided under the health benefits plan established under Section 35.0031.

SECTION 5. Subchapter D, Chapter 62, Health and Safety Code, is amended by adding Section 62.157 to read as follows:

Sec. 62.157. TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS. (a) In providing covered benefits to a child with special health care needs, a health plan provider must permit benefits to be provided through telemedicine medical services and telehealth services in accordance with policies developed by the commission.

(b) The policies must provide for:

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

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

(c) In developing the policies required by Subsection (a), the commission shall consult with:

- (1) The University of Texas Medical Branch at Galveston;
- (2) Texas Tech University Health Sciences Center;
- (3) the Texas Department of Health;
- (4) providers of telemedicine hub sites in this state;
- (5) providers of services to children with special health care needs; and
- (6) representatives of consumer or disability groups affected by changes to services for children with special health care needs.

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

Sec. 531.02161. MEDICAID SERVICES PROVIDED THROUGH TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES TO CHILDREN WITH SPECIAL HEALTH CARE NEEDS. (a) In this section, "Child with special health care needs" has the meaning assigned by Section 35.0022, Health and Safety Code.

(b) The commission by rule shall establish policies that permit reimbursement under the state Medicaid and Children's Health Insurance program for services provided through telemedicine medical services and telehealth services to children with special health care needs.

(c) The policies required under this section must:

- (1) be designed to:
 - (A) prevent unnecessary travel and encourage efficient use of telemedicine medical services and telehealth services for children with special health care needs in all suitable circumstances; and
 - (B) ensure in a cost-effective manner the availability to a child with special health care needs of services appropriately performed using telemedicine medical services and telehealth services that are comparable to the same types of services available to that child without the use of telemedicine medical services and telehealth services; and

(2) provide for reimbursement of multiple providers of different services who participate in a single telemedicine medical services and telehealth services session for a child with special health care needs, if the commission determines that reimbursing each provider for the session is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services and telehealth services, including the costs of transportation and lodging and other direct costs.

SECTION __. The Health and Human Services Commission and the Texas Department of Health shall develop and implement policies required by Sections 35.0041 and 62.157, Health and Safety Code, as added by this Act, not later than December 31, 2001.

SECTION __. Not later than December 1 of each even-numbered year, the commission shall report to the Speaker of the House of Representatives, the Lieutenant

Governor, and the Governor on the effects of telemedicine medical services on the Medicaid and Childrens Health Insurance programs in the state, including the number of physicians and health professionals using telemedicine medical services, the geographic and demographic dispositions of the physicians and health professionals, the number of patients receiving telemedicine medical services, the types of services being provided, and the cost of utilization of telemedicine medical services to the program.

Section _____. Section 58.253(a), Utilities Code, is amended to read as follows: (a) On customer request, an electing company shall provide private network services to: (1) an educational institution; (2) a library; (3) a nonprofit telemedicine center; (4) a public or not-for-profit hospital; (5) a project that would have been eligible to be funded by the telecommunications infrastructure fund under Subchapter C, Chapter 57, as that subchapter existed on January 1, 2001; or (6) a legally constituted consortium or group of entities listed in this subsection.

The amendments were read.

Senator Madla moved to concur in the House amendments to **SB 1536**.

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

Present-not voting: Mr. President.

(President in Chair)

SENATE BILL 7 WITH HOUSE AMENDMENTS

Senator Ellis called **SB 7** 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 7** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the period during which a person arrested is required to be taken before a magistrate and to the appointment and compensation of counsel to represent indigent persons accused of crime.

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

SECTION 1. This Act may be known as the Texas Fair Defense Act.

SECTION 2. Article 1.051, Code of Criminal Procedure, is amended by amending Subsection (c) and adding Subsections (i) and (j) to read as follows:

(c) An indigent defendant is entitled to have an attorney appointed to represent him in any adversary judicial proceeding that may result in punishment by confinement and in any other criminal proceeding if the court concludes that the interests of justice require representation. Except as otherwise provided by this subsection, if [H] an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have been initiated against the defendant, a [the] court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county shall appoint counsel [to represent the defendant] as soon as possible, but not later than the end of the third working day after the date on which the court or the courts' designee receives the defendant's request for

appointment of counsel. In a county with a population of 250,000 or more, the court or the courts' designee shall appoint counsel as required by this subsection as soon as possible, but not later than the end of the first working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel.

(i) Except as otherwise provided by this subsection, if an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have not been initiated against the defendant, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county shall appoint counsel immediately following the expiration of three working days after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. In a county with a population of 250,000 or more, the court or the courts' designee shall appoint counsel as required by this subsection immediately following the expiration of one working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel.

(j) A court or the courts' designee may without unnecessary delay appoint new counsel to represent an indigent defendant for whom counsel is appointed under Subsection (c) or (i) if:

(1) the defendant is subsequently charged in the case with an offense different from the offense with which the defendant was initially charged; and

(2) good cause to appoint new counsel is stated on the record as required by Article 26.04(j)(2).

SECTION 3. Article 14.06(a), Code of Criminal Procedure, is amended to read as follows:

(a) Except as provided by Subsection (b), in each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall take the person arrested or have him taken without unnecessary delay, but not later than 48 hours after the person is arrested, before the magistrate who may have ordered the arrest, before some magistrate of the county where the arrest was made without an order, or, if necessary to provide more expeditiously to the person arrested the warnings described by Article 15.17 of this Code, before a magistrate in a county bordering the county in which the arrest was made. The magistrate shall immediately perform the duties described in Article 15.17 of this Code.

SECTION 4. Article 15.17, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, if necessary to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in a county bordering the county in which the arrest was made. The arrested person may be taken before the magistrate in person or the image of the arrested person may be broadcast by closed circuit television to the magistrate. The magistrate shall inform in clear language the person arrested, either in person or by closed circuit television, of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys

representing the state, of his right to terminate the interview at any time, ~~[of his right to request the appointment of counsel if he is indigent and cannot afford counsel,] and of his right to have an examining trial. The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel in a manner understood by the person. If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. If the person arrested is indigent and requests appointment of counsel and if the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel. The magistrate [He] shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall admit the person arrested to bail if allowed by law. A closed circuit television system may not be used under this subsection unless the system provides for a two-way communication of image and sound between the arrested person and the magistrate. A recording of the communication between the arrested person and the magistrate shall be made. The recording shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the recording is made if the person is charged with a misdemeanor or the 120th day after the date on which the recording is made if the person is charged with a felony. The counsel for the defendant may obtain a copy of the recording on payment of a reasonable amount to cover costs of reproduction.~~

(e) In each case in which a person arrested is taken before a magistrate as required by Subsection (a), a record shall be made of:

(1) the magistrate informing the person of the person's right to request appointment of counsel;

(2) the magistrate asking the person whether the person wants to request appointment of counsel; and

(3) whether the person requested appointment of counsel.

(f) A record required under Subsection (e) may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a).

SECTION 5. Article 26.04, Code of Criminal Procedure, is amended to read as follows:

Art. 26.04. PROCEDURES FOR APPOINTING [COURT SHALL APPOINT] COUNSEL. (a) The judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, shall adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for or charged with a misdemeanor punishable by

confinement or a felony. The procedures must be consistent with this article and Articles 1.051, 15.17, 26.05, and 26.052. A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (h), or (i). The court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

(b) Procedures adopted under Subsection (a) shall:

(1) authorize only the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county, or the judges' designee, to appoint counsel for indigent defendants in the county;

(2) apply to each appointment of counsel made by a judge or the judges' designee in the county;

(3) ensure that each indigent defendant in the county who is charged with a misdemeanor punishable by confinement or with a felony and who appears in court without counsel has an opportunity to confer with appointed counsel before the commencement of judicial proceedings;

(4) require appointments for defendants in capital cases in which the death penalty is sought to comply with the requirements under Article 26.052; and

(5) ensure that each attorney appointed from a public appointment list to represent an indigent defendant perform the attorney's duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and applicable rules of ethics.

(c) Whenever a [the] court or the courts' designee authorized under Subsection (b) to appoint counsel for indigent defendants in the county determines that a defendant charged with a felony or a misdemeanor punishable by confinement [imprisonment] is indigent or that the interests of justice require representation of a defendant in a criminal proceeding, the court or the courts' designee shall appoint one or more practicing attorneys to defend the defendant in accordance with the procedures adopted under Subsection (a) [him].

(d) A public appointment list from which an attorney is appointed as required by Subsection (a) shall contain the names of qualified attorneys, each of whom:

(1) applies to be included on the list;

(2) meets the objective qualifications specified by the judges under Subsection (e);

(3) meets any applicable qualifications specified by the Task Force on Indigent Defense; and

(4) is approved by a majority of the judges who established the appointment list under Subsection (e).

(e) In a county in which a court is required under Subsection (a) to appoint an attorney from a public appointment list:

(1) the judges of the county courts and statutory county courts trying misdemeanor cases in the county, by formal action:

(A) shall:

(i) establish a public appointment list of attorneys qualified to provide representation in the county in misdemeanor cases punishable by confinement; and

(ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense and the attorneys' qualifications; and

(2) the judges of the district courts trying felony cases in the county, by formal action:

(A) shall:

(i) establish a public appointment list of attorneys qualified to provide representation in felony cases in the county; and

(ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense and the attorneys' qualifications.

(f) In a county in which a public defender is appointed under Article 26.044, the court or the courts' designee may appoint the public defender to represent the defendant in accordance with guidelines established for the public defender.

(g) A countywide alternative program for appointing counsel for indigent defendants in criminal cases is established by a formal action in which two-thirds of the judges of the courts designated under this subsection vote to establish the alternative program. An alternative program for appointing counsel in misdemeanor and felony cases may be established in the manner provided by this subsection by the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county. An alternative program for appointing counsel in misdemeanor cases may be established in the manner provided by this subsection by the judges of the county courts and statutory county courts trying criminal cases in the county. An alternative program for appointing counsel in felony cases may be established in the manner provided by this subsection by the judges of the district courts trying criminal cases in the county. In a county in which an alternative program is established:

(1) the alternative program may:

(A) use a single method for appointing counsel or a combination of methods; and

(B) use a multicounty appointment list using a system of rotation; and

(2) the procedures adopted under Subsection (a) must ensure that:

(A) attorneys appointed using the alternative program to represent defendants in misdemeanor cases punishable by confinement:

(i) meet specified objective qualifications, which may be graduated according to the degree of seriousness of the offense, for providing representation in misdemeanor cases punishable by confinement; and

(ii) are approved by a majority of the judges of the county courts and statutory county courts trying misdemeanor cases in the county;

(B) attorneys appointed using the alternative program to represent defendants in felony cases:

(i) meet specified objective qualifications, which may be graduated according to the degree of seriousness of the offense, for providing representation in felony cases; and

(ii) are approved by a majority of the judges of the district courts trying felony cases in the county;

(C) appointments for defendants in capital cases in which the death penalty is sought comply with the requirements of Article 26.052; and

(D) appointments are reasonably and impartially allocated among qualified attorneys.

(h) In a county in which an alternative program for appointing counsel is established as provided by Subsection (g) and is approved by the presiding judge of the administrative judicial region, a court or the courts' designee may appoint an attorney to represent an indigent defendant by using the alternative program. In establishing an alternative program under Subsection (g), the judges of the courts establishing the program may not, without the approval of the commissioners court, obligate the county by contract or by the creation of new positions that cause an increase in expenditure of county funds.

(i) A court or the courts' designee required under Subsection (c) to appoint an attorney to represent a defendant accused of a felony may appoint an attorney from any county located in the court's administrative judicial region.

(j) An attorney appointed under this article [subsection] shall:

(1) make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed; and

(2) represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause is entered on the record.

(k) A court may replace an attorney who violates Subsection (j)(1) with other counsel. A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove from consideration for appointment an attorney who intentionally or repeatedly violates Subsection (j)(1).

(l) Procedures adopted under Subsection (a) must include procedures and financial standards for determining whether a defendant is indigent. The procedures and standards shall apply to each defendant in the county equally, regardless of whether the defendant is in custody or has been released on bail.

(m) [(b)] In determining whether a defendant is indigent, the court or the courts' designee may [shall] consider [such factors as] the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, spousal income that is available to the defendant, and the defendant's ability to obtain a loan[; and whether the defendant has posted or is capable of posting bail]. The court or the courts' designee may not consider whether [deny appointed counsel to a defendant solely because] the defendant has posted or is capable of posting bail, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations listed in this subsection.

(n) [(c)] A defendant who requests a determination of indigency and appointment of counsel shall:

(1) complete under oath a questionnaire concerning his financial resources;

(2) respond under oath to an examination regarding his financial resources by the judge or magistrate responsible for determining whether the defendant is indigent; or

(3) complete the questionnaire and respond to examination by the judge or magistrate.

(o) ~~(d)~~ Before making a determination of whether a defendant is indigent, the court shall request the defendant to sign under oath a statement substantially in the following form:

"On this _____ day of _____, 20 [19]____, I have been advised by the (name of the court) Court of my right to representation by counsel in the trial of the charge pending against me. I certify that I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me. (signature of the defendant)"

(p) A defendant who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs. ~~(e)~~ If there is a material change in financial circumstances after a determination of indigency or nonindigency is made, the defendant, the defendant's counsel, or the attorney representing the state may move for reconsideration of the determination.

(q) ~~(f)~~ A written or oral statement elicited under this article or evidence derived from the statement may not be used for any purpose, except to determine the defendant's indigency or to impeach the direct testimony of the defendant. This subsection does not prohibit prosecution of the defendant under Chapter 37, Penal Code.

SECTION 6. Article 26.044, Code of Criminal Procedure, is amended to read as follows:

Art. 26.044. PUBLIC DEFENDER ~~[IN COUNTY WITH FOUR COUNTY COURTS AND FOUR DISTRICT COURTS]~~. (a) In this chapter, "public defender" means a governmental entity or nonprofit corporation:

(1) operating under a written agreement with a governmental entity, other than an individual judge or court;

(2) using public funds; and

(3) providing legal representation and services to indigent defendants accused of a crime or juvenile offense, as those terms are defined by Section 71.001, Government Code.

(b) The commissioners court of any county, on written approval of a judge of a county court, statutory county court, or district court trying criminal cases in the county, ~~[having four county courts and four district courts]~~ may appoint a governmental entity or nonprofit corporation ~~[one or more attorneys]~~ to serve as a public defender. ~~The commissioners courts of two or more counties may enter into a written agreement to jointly appoint and fund a regional~~ ~~[A]~~ public defender ~~[serves at the pleasure of the commissioners court]~~. In appointing a public defender under this subsection, the commissioners court shall specify or the commissioners courts shall jointly specify, if appointing a regional public defender:

(1) the duties of the public defender;

(2) the types of cases to which the public defender may be appointed under Article 26.04(f) and the courts in which the public defender may be required to appear;

(3) whether the public defender is appointed to serve a term or serve at the pleasure of the commissioners court or the commissioners courts; and

(4) if the public defender is appointed to serve a term, the term of appointment and the procedures for removing the public defender.

(c) Before appointing a public defender under Subsection (b), the commissioners court or commissioners courts shall solicit proposals for the public defender. A proposal must include:

(1) a budget for the public defender, including salaries;
(2) a description of each personnel position, including the chief public defender position;

(3) the maximum allowable caseloads for each attorney employed by the proponent;

(4) provisions for personnel training;

(5) a description of anticipated overhead costs for the public defender; and

(6) policies regarding the use of licensed investigators and expert witnesses by the proponent.

(d) After considering each proposal for the public defender submitted by a governmental entity or nonprofit corporation, the commissioners court or commissioners courts shall select a proposal that reasonably demonstrates that the proponent will provide adequate quality representation for indigent defendants in the county or counties.

(e) The total cost of the proposal may not be the sole consideration in selecting a proposal.

(f) ~~(b)~~ To be eligible for appointment as a public defender, the governmental entity or nonprofit corporation ~~a person~~ must be directed by a chief public defender who:

(1) is ~~be~~ a member of the State Bar of Texas;

(2) has ~~have~~ practiced law for at least three years ~~one year~~; and

(3) has substantial ~~have~~ experience in the practice of criminal law.

(g) A ~~(c)~~ The public defender is entitled to receive funds for personnel costs and expenses incurred in operating as a public defender in amounts ~~an annual salary in an amount~~ fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the public defender serves more than one county.

(h) A public defender may employ attorneys, licensed investigators, and other personnel necessary to perform the duties of the public defender as specified by the commissioners court or commissioners courts under Subsection (b)(1).

(i) ~~(d)~~ Except as authorized by this article, the chief ~~a~~ public defender or an attorney employed by a public defender may not:

(1) engage in the private practice of criminal law; or

(2) accept anything of value not authorized by this article for services rendered under this article.

(j) A public defender may refuse an appointment under Article 26.04(f) if:

(1) a conflict of interest exists;

(2) the public defender has insufficient resources to provide adequate representation for the defendant;

(3) the public defender is incapable of providing representation for the defendant in accordance with the rules of professional conduct; or

(4) the public defender shows other good cause for refusing the appointment.

(k) ~~(e)~~ The judge may remove a public defender who violates a provision of Subsection (i) ~~(d)~~ of this article.

(l) ~~(f)~~ A public defender or an attorney appointed by a court of competent jurisdiction shall represent each indigent person who is charged with a criminal offense in a county having at least four county courts and at least four district courts and each indigent minor who is a party to a juvenile delinquency proceeding in the county.

~~[(g)]~~ A public defender may investigate the financial condition of any person the public defender is appointed to represent. The defender shall report the results of the investigation to the appointing judge. The judge may hold a hearing to determine if the person is indigent and entitled to representation under this article.

~~(m)~~ ~~[(h)]~~ If it is necessary that an attorney other than a public defender be ~~is~~ appointed, the attorney is entitled to the compensation provided by Article 26.05 of this code.

~~(i)~~ At any stage of the proceeding, including appeal or other postconviction proceedings, the judge may appoint another attorney to represent the person. The substitute attorney is entitled to the compensation provided by Article 26.05 of this code.

~~(j)~~ Except for the provisions relating to daily appearance fees, Article 26.05 of this code applies to a public defender appointed under this article.]

SECTION 7. Article 26.05, Code of Criminal Procedure, is amended to read as follows:

Art. 26.05. COMPENSATION OF COUNSEL APPOINTED TO DEFEND. (a) A counsel, other than an attorney with a public ~~defender~~ ~~[defender's office]~~, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be ~~[reimbursed for reasonable expenses incurred with prior court approval for purposes of investigation and expert testimony and shall be]~~ paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

(1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and ~~[or]~~ time spent in a proceeding in which sworn oral testimony is elicited;

(2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires; ~~[and]~~

(3) preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and

(4) preparation of a motion for rehearing.

(b) All payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts trying criminal cases in ~~[county and district criminal court judges within]~~ each county~~[-except that in a county with only one judge with criminal jurisdiction the schedule will be adopted by the administrative judge for that judicial district].~~

(c) Each fee schedule adopted shall state reasonable ~~[will include a]~~ fixed rates or ~~[rate,]~~ minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and customary rates charged for similar legal services in the community, [and daily rates] and shall [with] provide a form for the appointed counsel to itemize ~~[reporting]~~ the types of services performed [in each one]. No payment shall be made under this article ~~[section]~~ until the form for itemizing ~~[reporting]~~ the services performed is submitted to the judge presiding over the proceedings and the judge approves the payment. If the judge disapproves the requested amount of payment, the judge shall make written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved may appeal the

disapproval by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment and determine the appropriate amount of payment. In reviewing the disapproval, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region [and approved by the court] and that is in accordance with the fee schedule for that county.

(d) A counsel in a noncapital case, other than an attorney with a public defender, appointed to represent a defendant under this code shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Expenses incurred with prior court approval shall be reimbursed in the same manner provided for capital cases by Articles 26.052(f) and (g), and expenses incurred without prior court approval shall be reimbursed in the manner provided for capital cases by Article 26.052(h).

(e) A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove an attorney from consideration for appointment if, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.

(f) All payments made under this article shall be paid from the general fund of the county in which the prosecution was instituted or habeas corpus hearing held and may be included as costs of court.

(g) [(e)] If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay.

(h) [(f)] Reimbursement of expenses incurred for purposes of investigation or expert testimony may be paid directly to a private investigator licensed under Chapter 1702, Occupations Code, [the Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes)] or to an expert witness in the manner designated by appointed counsel and approved by the court.

SECTION 8. Article 26.052, Code of Criminal Procedure, is amended by amending Subsections (d) and (e) and adding Subsection (m) to read as follows:

(d)(1) The committee shall adopt standards for the qualification of attorneys to be appointed to represent indigent defendants in capital cases in which the death penalty is sought [for appointment to death penalty cases].

(2) The standards must require that an attorney appointed to a death penalty case:

- (A) be a member of the State Bar of Texas;
- (B) exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;
- (C) have at least five years of experience in criminal litigation;
- (D) have tried to a verdict as lead defense counsel a significant number of felony cases, including homicide trials and other trials for offenses punishable as second or first degree felonies or capital felonies;
- (E) have trial experience in:

(i) the use of and challenges to mental health or forensic expert witnesses; and

(ii) investigating and presenting mitigating evidence at the penalty phase of a death penalty trial; and

(F) have participated in continuing legal education courses or other training relating to criminal defense in death penalty cases.

(3) The committee shall prominently post the standards in each district clerk's office in the region with a list of attorneys qualified for appointment.

(4) Not later than the second anniversary of the date an attorney is placed on the list of attorneys qualified for appointment in death penalty cases and each year following the second anniversary, the attorney must present proof to the committee that the attorney has successfully completed the minimum continuing legal education requirements of the state bar, including a course or other form of training relating to the defense of death penalty cases. The committee shall remove the attorney's name from the list of qualified attorneys if the attorney fails to provide the committee with proof of completion of the continuing legal education requirements.

(e) The presiding judge of the district court in which a capital felony case is filed shall appoint two attorneys, at least one of whom must be qualified under this chapter, [counsel] to represent an indigent defendant as soon as practicable after charges are filed, unless the state gives notice in writing that the state will not seek the death penalty [if the death penalty is sought in the case. The judge shall appoint lead trial counsel from the list of attorneys qualified for appointment. The judge shall appoint a second counsel to assist in the defense of the defendant, unless reasons against the appointment of two counsel are stated in the record].

(m) The local selection committee shall annually review the list of attorneys posted under Subsection (d) to ensure that each listed attorney satisfies the requirements under this chapter.

SECTION 9. Article 102.075(h), Code of Criminal Procedure, is amended to read as follows:

(h) The comptroller shall deposit money received under this article to the credit of the following accounts in the general revenue fund according to the specified percentages:

NAME OF ACCOUNT	PERCENTAGE
abused children's counseling	0.02%
crime stoppers assistance	0.6%
breath alcohol testing	1.28%
Bill Blackwood Law Enforcement Management Institute	5.04%
law enforcement officers standards and education	11.63%
comprehensive rehabilitation	12.37%
operator's and chauffeur's license	25.9%
criminal justice planning	29.18%
<u>fair defense account</u>	<u>13.98%</u>

SECTION 10. Chapter 51, Family Code, is amended by adding Section 51.101 to read as follows:

Sec. 51.101. APPOINTMENT OF COUNSEL PLAN. (a) The judges trying juvenile cases in each county shall adopt a plan that:

(1) specifies the qualifications necessary for an attorney to be included on an appointment list from which attorneys are appointed to represent children in proceedings under this title; and

- (2) establishes procedures for:
- (A) including attorneys on the appointment list and removing attorneys from the list; and
- (B) appointing attorneys from the appointment list to individual cases.
- (b) A plan adopted under Subsection (a) must:
- (1) to the extent practicable, comply with the requirements of Article 26.04, Code of Criminal Procedure, except that:
- (A) the income and assets of the child's parent or other person responsible for the child's support must be used in determining whether the child is indigent; and
- (B) any alternative plan for appointing counsel is established by the judges trying juvenile cases in the county; and
- (2) recognize the differences in qualifications and experience necessary for appointments to cases in which:
- (A) the allegation is:
- (i) conduct indicating a need for supervision;
- (ii) delinquent conduct, and commitment to the Texas Youth Commission is not an authorized disposition; or
- (iii) delinquent conduct, and commitment to the Texas Youth Commission without a determinate sentence is an authorized disposition;
- (B) determinate sentence proceedings have been initiated; or
- (C) proceedings for discretionary transfer to criminal court have been initiated.

SECTION 11. Section 71.001, Government Code, is amended to read as follows:

Sec. 71.001. DEFINITIONS. In this chapter:

- (1) "Ad hoc assigned counsel program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are individually appointed to provide legal representation and services to a particular indigent defendant accused of a crime or juvenile offense.
- (2) "Chair" means the chair of the council.
- (3) "Contract defender program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to a group of unspecified indigent defendants who appear before a particular court or group of courts.
- (4) ~~(2)~~ "Council" means the Texas Judicial Council.
- (5) "Crime" means:
- (A) a misdemeanor punishable by confinement; or
- (B) a felony.
- (6) "Defendant" means a person accused of a crime or a juvenile offense.
- (7) "Indigent defense support services" means criminal defense services that:
- (A) are provided by licensed investigators, experts, or other similar specialists, including forensic experts and mental health experts; and
- (B) are reasonable and necessary for appointed counsel to provide adequate representation to indigent defendants.
- (8) "Juvenile offense" means conduct committed by a person while younger than 17 years of age that constitutes:
- (A) a misdemeanor punishable by confinement; or
- (B) a felony.

(9) "Public defender" has the meaning assigned by Article 26.044(a), Code of Criminal Procedure.

SECTION 12. Subchapter C, Chapter 71, Government Code, is amended by adding Section 71.0351 to read as follows:

Sec. 71.0351. INDIGENT DEFENSE INFORMATION. (a) Not later than January 1 of each year, in each county, a copy of all formal and informal rules and forms that describe the procedures used in the county to provide indigent defendants with counsel in accordance with the Code of Criminal Procedure, including the schedule of fees required under Article 26.05 of that code, shall be prepared and sent to the Office of Court Administration of the Texas Judicial System in the form and manner prescribed by the office. Except as provided by Subsection (b), the local administrative district judge in each county, or the person designated by the judge, shall prepare and send to the office of court administration a copy of all rules and forms adopted by the judges of the district courts trying felony cases in the county. Except as provided by Subsection (b), the local administrative statutory county court judge in each county, or the person designated by the judge, shall prepare and send to the office of court administration a copy of all rules and forms adopted by the judges of the county courts and statutory county courts trying misdemeanor cases in the county.

(b) If the judges of two or more levels of courts adopt the same formal and informal rules and forms as described by Subsection (a), the local administrative judge serving the courts having jurisdiction over offenses with the highest classification of punishment, or the person designated by the judge, shall prepare and send to the office of court administration a copy of the rules and forms.

(c) In each county, the county auditor, or the person designated by the commissioners court if the county does not have a county auditor, shall prepare and send to the office of court administration in the form and manner prescribed by the office and on a monthly, quarterly, or annual basis, with respect to legal services provided in the county to indigent defendants during each fiscal year, information showing the total amount expended by the county to provide indigent defense services and an analysis of the amount expended by the county:

(1) in each district, county, statutory county, and appellate court;

(2) in cases for which a private attorney is appointed for an indigent defendant;

(3) in cases for which a public defender is appointed for an indigent defendant;

(4) in cases for which counsel is appointed for an indigent juvenile under Section 51.10(f), Family Code; and

(5) for investigation expenses, expert witness expenses, or other litigation expenses.

(d) As a duty of office, each district and county clerk shall cooperate with the county auditor or the person designated by the commissioners court and the commissioners court in retrieving information required to be sent to the office of court administration under this section and under a reporting plan developed by the Task Force on Indigent Defense under Section 71.061(a).

(e) On receipt of information required under this section, the office of court administration shall forward the information to the Task Force on Indigent Defense.

SECTION 13. Chapter 71, Government Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. TASK FORCE ON INDIGENT DEFENSE

Sec. 71.051. ESTABLISHMENT OF TASK FORCE; COMPOSITION. The Task Force on Indigent Defense is established as a standing committee of the council and is composed of eight ex officio members and four appointive members.

Sec. 71.052. EX OFFICIO MEMBERS. The ex officio members are:

(1) the following six members of the council:

(A) the chief justice of the supreme court;

(B) the presiding judge of the court of criminal appeals;

(C) the member of the senate appointed by the lieutenant governor;

(D) the member of the house of representatives appointed by the speaker of the house;

(E) one of the courts of appeals justices serving on the council who is designated by the governor to serve on the task force; and

(F) one of the county court or statutory county court judges serving on the council who is designated by the governor to serve on the task force or, if a county court or statutory county court judge is not serving on the council, one of the statutory probate court judges serving on the council who is designated by the governor to serve on the task force;

(2) the chair of the Senate Criminal Justice Committee; and

(3) the chair of the House Criminal Jurisprudence Committee.

Sec. 71.053. APPOINTMENTS. (a) The governor shall appoint with the advice and consent of the senate four members of the task force as follows:

(1) one member who is an active district judge serving as a presiding judge of an administrative judicial region;

(2) one member who is a judge of a constitutional county court or who is a county commissioner;

(3) one member who is a practicing criminal defense attorney; and

(4) one member who is a public defender or who is employed by a public defender.

(b) The members serve staggered terms of two years, with two members' terms expiring February 1 of each odd-numbered year and two members' terms expiring February 1 of each even-numbered year.

(c) In making appointments to the task force, the governor shall attempt to reflect the geographic and demographic diversity of the state.

(d) A person may not be appointed to the task force 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 task force or the council.

Sec. 71.054. VACANCIES. A vacancy on the task force must be filled for the unexpired term in the same manner as the original appointment. An appointment to fill a vacancy shall be made not later than the 90th day after the date the vacancy occurs.

Sec. 71.055. MEETINGS; QUORUM; VOTING. (a) The task force shall meet at least quarterly and at such other times as it deems necessary or convenient to perform its duties.

(b) Six members of the task force constitute a quorum for purposes of transacting task force business. The task force may act only on the concurrence of five task force members or a majority of the task force members present, whichever number is

greater. The task force may develop policies and standards under Section 71.060 only on the concurrence of seven task force members.

(c) A task force member is entitled to vote on any matter before the task force, except as otherwise provided by rules adopted by the task force and ratified by the council.

Sec. 71.056. COMPENSATION. A task force member may not receive compensation for services on the task force but is entitled to be reimbursed for actual and necessary expenses incurred in discharging the member's duties as a task force member. The expenses are paid from funds appropriated to the task force.

Sec. 71.057. BUDGET. (a) The task force's budget shall be a part of the budget for the council. In preparing a budget and presenting the budget to the legislature, the task force shall consult with the executive director of the Office of Court Administration of the Texas Judicial System.

(b) The task force's budget may include funds for personnel who are employees of the council but who are assigned to assist the task force in performing its duties.

(c) The executive director of the office of court administration may not reduce or modify the task force's budget or use funds appropriated to the task force without the approval of the task force.

Sec. 71.058. FAIR DEFENSE ACCOUNT. The fair defense account is an account in the general revenue fund that may be appropriated only to the task force for the purpose of implementing this subchapter.

Sec. 71.059. ACCEPTANCE OF GIFTS, GRANTS, AND OTHER FUNDS. The task force may accept gifts, grants, and other funds from any public or private source to pay expenses incurred in performing its duties under this subchapter.

Sec. 71.060. POLICIES AND STANDARDS. (a) The task force shall develop policies and standards for providing legal representation and other defense services to indigent defendants at trial, on appeal, and in postconviction proceedings. The policies and standards may include:

(1) performance standards for counsel appointed to represent indigent defendants;

(2) qualification standards under which attorneys may qualify for appointment to represent indigent defendants, including:

(A) qualifications commensurate with the seriousness of the nature of the proceeding;

(B) qualifications appropriate for representation of mentally ill defendants and noncitizen defendants;

(C) successful completion of relevant continuing legal education programs approved by the council; and

(D) testing and certification standards;

(3) standards for ensuring appropriate appointed caseloads for counsel appointed to represent indigent defendants;

(4) standards for determining whether a person accused of a crime or juvenile offense is indigent;

(5) policies and standards governing the organization and operation of an ad hoc assigned counsel program;

(6) policies and standards governing the organization and operation of a public defender consistent with recognized national policies and standards;

(7) standards for providing indigent defense services under a contract defender program consistent with recognized national policies and standards;

(8) standards governing the reasonable compensation of counsel appointed to represent indigent defendants;

(9) standards governing the availability and reasonable compensation of providers of indigent defense support services for counsel appointed to represent indigent defendants;

(10) standards governing the operation of a legal clinic or program that provides legal services to indigent defendants and is sponsored by a law school approved by the supreme court;

(11) policies and standards governing the appointment of attorneys to represent children in proceedings under Title 3, Family Code; and

(12) other policies and standards for providing indigent defense services as determined by the task force to be appropriate.

(b) The task force shall submit policies and standards developed under Subsection (a) to the council for ratification.

(c) Any qualification standards adopted by the task force under Subsection (a) that relate to the appointment of counsel in a death penalty case must be consistent with the standards specified under Article 26.052(d), Code of Criminal Procedure. An attorney who is identified by the task force as not satisfying performance or qualification standards adopted by the task force under Subsection (a) may not accept an appointment in a capital case.

Sec. 71.061. COUNTY REPORTING PLAN; TASK FORCE REPORTS. (a) The task force shall develop a plan that establishes statewide requirements for counties relating to reporting indigent defense information. The plan must include provisions designed to reduce redundant reporting by counties and provisions that take into consideration the costs to counties of implementing the plan statewide. The task force shall use the information reported by a county to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense. The task force may revise the plan as necessary to improve monitoring of indigent defense policies, standards, and procedures in this state.

(b) The task force shall annually submit to the governor, lieutenant governor, speaker of the house of representatives, and council and shall publish in written and electronic form a report:

(1) containing the information forwarded to the task force from the Office of Court Administration of the Texas Judicial System under Section 71.0351(e); and

(2) regarding:

(A) the quality of legal representation provided by counsel appointed to represent indigent defendants;

(B) current indigent defense practices in the state as compared to state and national standards;

(C) efforts made by the task force to improve indigent defense practices in the state; and

(D) recommendations made by the task force for improving indigent defense practices in the state.

(c) The task force shall annually submit to the Legislative Budget Board and council and shall publish in written and electronic form a detailed report of all expenditures made under this subchapter, including distributions under Section 71.062.

(d) The task force may issue other reports relating to indigent defense as determined to be appropriate by the task force.

Sec. 71.062. TECHNICAL SUPPORT; GRANTS. (a) The task force shall:

(1) provide technical support to:

(A) assist counties in improving their indigent defense systems; and

(B) promote compliance by counties with the requirements of state law relating to indigent defense;

(2) direct the comptroller to distribute funds, including grants, to counties to provide indigent defense services in the county; and

(3) monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant, including enforcement by directing the comptroller to:

(A) withdraw grant funds; or

(B) require reimbursement of grant funds by the county.

(b) The task force shall direct the comptroller to distribute funds as required by Subsection (a)(2) based on a county's compliance with standards developed by the task force and the county's demonstrated commitment to compliance with the requirements of state law relating to indigent defense.

(c) The task force shall develop policies to ensure that funds under Subsection (a)(2) are allocated and distributed to counties in a fair manner.

(d) A county may not reduce the amount of funds provided for indigent defense services in the county because of funds provided by the task force under this section.

SECTION 14. Sections 26.041, 26.042, 26.043, 26.045, 26.046, 26.047, 26.048, 26.049, 26.050, and 26.058, Code of Criminal Procedure, are repealed.

SECTION 15. The change in law made by this Act applies only to a person arrested for or charged with an offense committed or, for purposes of Title 3, Family Code, a child taken into custody for conduct or alleged to have engaged in conduct that occurs on or after the effective date of this Act and to the appointment of counsel for that person or child. A person arrested for or charged with an offense committed or a child taken into custody for conduct or alleged to have engaged in conduct that occurs before the effective date of this Act is covered by the law in effect when the offense was committed or the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 16. A county having established a public defender under a statute repealed or amended by this Act may continue the existence and operation of the public defender under the terms of the repealed or amended statute as that statute existed immediately before the effective date of this Act if the public defender is a governmental entity or nonprofit corporation described by Article 26.044(a), Code of Criminal Procedure, as amended by this Act. The change in law made by this Act to Article 26.044, Code of Criminal Procedure, applies only to a public defender appointed on or after the effective date of this Act.

SECTION 17. A local administrative judge or other person designated under Subsection (a) or (b), Section 71.0351, Government Code, as added by this Act, shall begin sending to the Office of Court Administration of the Texas Judicial System the information required to be sent by that section on or before January 1, 2002. A county auditor or other person designated under Subsection (c), Section 71.0351, Government Code, as added by this Act, shall begin sending to the Office of Court Administration of the Texas Judicial System the information required by that section on or before September 1, 2002.

SECTION 18. The governor shall make appointments to the Task Force on Indigent Defense as soon as practicable after the effective date of this Act. In appointing the initial members of the task force, the governor shall appoint the member who is an active district judge serving as a presiding judge of an administrative judicial region and the member who is a practicing criminal defense attorney for terms expiring February 1, 2003, and the member who is a judge of a constitutional county court or who is a county commissioner and the member who is a public defender or who is employed by a public defender for terms expiring February 1, 2004.

SECTION 19. A local selection committee shall amend standards previously adopted by the committee to conform with the requirements of Article 26.052(d), Code of Criminal Procedure, as amended by this Act, not later than April 1, 2002. An attorney appointed on or after April 1, 2002, to a death penalty case must meet the standards adopted in conformity with the amended Article 26.052(d). An attorney appointed before April 1, 2002, to a death penalty case is covered by the law in effect when the attorney was appointed, and the former law is continued in effect for that purpose.

SECTION 20. Article 102.075(h), Code of Criminal Procedure, as amended by this Act, applies only to a court cost collected under that article on or after the effective date of this Act. A court cost collected under Article 102.075, Code of Criminal Procedure, before the effective date of this Act is governed by the law in effect when the court cost was collected, and the former law is continued in effect for that purpose.

SECTION 21. This Act takes effect January 1, 2002.

Floor Amendment No. 1

Amend **CSSB 7**, in SECTION 4 of the bill, in amended Article 15.17(a), Code of Criminal Procedure (house committee report, page 4, line 15), by striking "in a manner understood by the person".

Floor Amendment No. 2

Amend **CSSB 7**, in SECTION 5 of the bill, as follows:

(1) In added Article 26.04(b)(4), Code of Criminal Procedure (house committee report, page 7, line 13), after "Article 26.052:", strike "and".

(2) In added Article 26.04(b)(5), Code of Criminal Procedure (house committee report, page 7, line 18), strike "rules of ethics." and substitute the following: rules of ethics; and

(6) ensure that appointments are allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory.

Floor Amendment No. 3

Amend **CSSB 7** in SECTION 5 of the bill as follows:

(1) In amended Article 26.04(c), Code of Criminal Procedure (house committee report, page 7, line 26), between "with" and "the", insert "this subsection and".

(2) In amended Article 26.04(c), Code of Criminal Procedure (house committee report, page 7, line 27), after the period, insert:

If the court or the court's designee determines that the defendant does not speak and understand the English language or that the defendant is deaf, the court or the court's designee shall make an effort to appoint an attorney who is capable of communicating in a language understood by the defendant.

Floor Amendment No. 4

Amend **CSSB 7**, in SECTION 5 of the bill, in amended Article 26.04(m), Code of Criminal Procedure (house committee report, page 12, lines 22 and 23), by striking "spousal income that is available to the defendant, and the defendant's ability to obtain a loan" and substituting "and spousal income that is available to the defendant".

Floor Amendment No. 5

Amend **CSSB 7**, in SECTION 5 of the bill, in amended Article 26.04, Code of Criminal Procedure (house committee report, page 14, between lines 7 and 8), by inserting the following:

(r) A court may not threaten to arrest or incarcerate a person solely because the person requests the assistance of counsel.

Floor Amendment No. 6

Amend **CSSB 7**, in SECTION 7 of the bill, in amended Article 26.05(b), Code of Criminal Procedure (house committee report, page 19, line 17), after the period, by inserting "On adoption of a schedule of fees as provided by this subsection, a copy of the schedule shall be sent to the commissioners court of the county."

Floor Amendment No. 7

Amend **CSSB 7**, in SECTION 7 of the bill, in amended Article 26.05(c), Code of Criminal Procedure (house committee report, page 19, lines 21-22), by striking "customary rates charged for similar legal services in the community" and substituting "the availability of qualified attorneys willing to accept the stated rates".

Floor Amendment No. 8

Amend **CSSB 7** as follows:

(1) In SECTION 13 of the bill, in the heading to added Section 71.059, Government Code (House committee report, page 32, line 13), between "FUNDS" and the period, insert "; STATE GRANTS TEAM".

(2) In SECTION 13 of the bill, after the heading to added Section 71.059, Government Code (House committee report, page 32, line 13), add "(a)".

(3) In SECTION 13 of the bill, at the end of added Section 71.059, Government Code (House committee report, page 32, between lines 16 and 17), add the following subsection:

(b) The State Grants Team of the Governor's Office of Budget and Planning may assist the task force in identifying grants and other resources available for use by the task force in performing its duties under this subchapter.

Floor Amendment No. 9

Amend **CSSB 7**, between SECTIONS 13 and 14 of the bill (house committee report, page 36, between lines 23 and 24), by inserting the following:

Sec. 71.063. IMMUNITY FROM LIABILITY. The task force, a member of the task force, or an agent of the task force performing duties on behalf of the task force is not liable for damages arising from an act or omission within the scope of the duties of the task force.

Floor Amendment No. 10

Amend **CSSB 7**, in SECTION 14 of the bill, between "26.050," and "and 26.058," (House Committee Printing, page 36, line 25), by inserting "26.053, as added by the 77th Legislature, Regular Session, 2001, 26.054, as added by the 77th Legislature, Regular Session, 2001,".

Floor Amendment No. 11

Amend **CSSB 7** by adding an appropriately numbered SECTION to read as follows and by renumbering existing SECTIONS accordingly:

SECTION _____. (a) Article 11.071, Code of Criminal Procedure, is amended by adding Section 8A to read as follows:

Sec. 8A. INCOMPETENT COUNSEL. If the applicant asserts as a claim in the application for a writ of habeas corpus that the applicant at trial was represented by appointed counsel and that the appointed counsel was incompetent, the convicting court in the findings of facts and conclusions of law shall state whether the counsel appointed:

(1) was at the time of appointment on the list of qualified attorneys described by Article 26.052(e); and

(2) provided representation at trial in a manner at least as competent as the minimum level of competence to be expected by the trial court of counsel meeting the standards adopted by the local selection committee under Article 26.052(d).

(b) The change in law made by this section applies only to an application for a writ of habeas corpus filed on or after the effective date of this Act. An application filed before the effective date of this Act is covered by the law in effect when the application was filed, and the former law is continued in effect for that purpose.

Floor Amendment No. 12

Amend **CSSB 7** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. (a) Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.033 to read as follows:

Art. 17.033. RELEASE ON BOND OF CERTAIN PERSONS ARRESTED WITHOUT A WARRANT. (a) Except as provided by Subsection (c), a person who is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed \$5,000, not later than the 24th hour after the person's arrest if the person was arrested for a misdemeanor and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.

(b) Except as provided by Subsection (c), a person who is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed \$10,000, not later than the 48th hour after the person's arrest if the person was arrested for a felony and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.

(c) On the filing of an application by the attorney representing the state, a magistrate may postpone the release of a person under Subsection (a) or (b) for not more than 72 hours after the person's arrest. An application filed under this subsection must state the reason a magistrate has not determined whether probable cause exists to believe that the person committed the offense for which the person was arrested.

(b) Article 17.033, Code of Criminal Procedure, as added by this Act, applies only to a person who is arrested on or after the effective date of this Act. A person who is arrested before the effective date of this Act is covered by the law in effect at the time of the arrest, and the former law is continued in effect for that purpose.

Floor Amendment No. 14

Amend **CSSB 7** in SECTION 2 of the bill as follows:

(1) In amended Article 1.051, Code of Criminal Procedure (house committee report, page 2, line 21), reletter new subsection (j) to (k) and add the following new subsection (j):

(j) Notwithstanding any other provision of this section, if an indigent defendant is released from custody prior to the appointment of counsel under this section, counsel shall be appointed at the defendant's first court appearance or when adversarial proceedings are initiated, whichever comes first.

Floor Amendment No. 15

Amend Amendment No. 14 by G. Lewis to **CSSB 7** in added Article 1.051(j), Code of Criminal Procedure, by striking "counsel shall be appointed at" and substituting "appointment of counsel is not required until".

Floor Amendment No. 17

Amend **CSSB 7** as follows:

(1) In SECTION 10 of the bill, in added Section 51.101(a), Family Code (house committee report, page 24, lines 15-16), strike "judges trying juvenile cases" and substitute "juvenile board".

(2) In SECTION 10 of the bill, in added Section 51.101(b)(1)(B) (house committee report, page 25, line 7), strike "judges trying juvenile cases" and substitute "juvenile board".

Floor Amendment No. 1 on Third Reading

Amend **CSSB 7** on third reading, in SECTION 2 of the bill, as follows:

(1) In added Article 1.051(i), Code of Criminal Procedure (house committee report, page 2, line 15), between "counsel." and "In", insert "If adversarial judicial proceedings are initiated against the defendant before the expiration of the three working days, the court or the courts' designee shall appoint counsel as provided by Subsection (c)."

(2) In added Article 1.051(i), Code of Criminal Procedure (house committee report, page 2, line 20), immediately after "counsel.", add "If adversarial judicial proceedings are initiated against the defendant before the expiration of the one working day, the court or the courts' designee shall appoint counsel as provided by Subsection (c)."

Floor Amendment No. 2 on Third Reading

Amend **CSSB 7**, on third reading, in added Section 71.063, Government Code, as added on second reading by Floor Amendment No. 9 by Hinojosa, by striking "The task force, a member of the task force, or an agent of the task force performing duties on behalf of the task force" and substituting "The task force or a member of the task force".

Floor Amendment No. 3 on Third Reading

Amend **CSSB 7**, on third reading, by striking Section 8A, Article 11.071, Code of Criminal Procedure, as added on second reading by Floor Amendment No. 11 by Gallego.

Floor Amendment No. 4 on Third Reading

Amend **CSSB 7**, on third reading, in added Article 1.051(j), Code of Criminal Procedure, as added on second reading by Floor Amendment No. 14 by G. Lewis, as amended by Floor Amendment No. 15 by Clark, between "adversarial" and "proceedings", by inserting "judicial".

Amendment No. 5 on Third Reading

Amend **CSSB 7** on third reading as follows:

1. In SECTION 13, in section 71.053, Government Code (House Committee Substitute, page 30, line 19), insert a new subsection (a)(5) to read as follows:

(5) One member who is a judge of a constitutional county court or who is a county commissioner of a county with a population of 250,000 or more.

The amendments were read.

On motion of Senator Ellis, the Senate concurred in the House amendments to **SB 7** by a viva voce vote.

SENATE BILL 616 WITH HOUSE AMENDMENTS

Senator Van de Putte called **SB 616** 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.

Committee Amendment No. 1

Amend **SB 616** by adding the following appropriately numbered SECTIONS of the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. (a) The commissioner of public health shall establish an asthma and allergy research advisory committee.

(b) The asthma and allergy research advisory committee is composed of nine members appointed by the governor, in consultation with the lieutenant governor and the speaker of the house of representatives.

(c) The governor shall select members of the asthma and allergy research advisory committee based on the members' experience, expertise, or special interest in asthma and allergy and:

- (1) asthma and allergy education;
- (2) indoor air quality;

(3) the public school system and its dealings with children with asthma and an allergy;

(4) epidemiology;

(5) pharmacology;

(6) parenting a child with asthma or an allergy; or

(7) immunology.

(d) The commissioner of public health shall select a member of the asthma and allergy research advisory committee to serve as the presiding officer of the committee. The presiding officer may not be an officer or employee of the state.

(e) The asthma and allergy research advisory committee shall:

(1) develop a plan to research asthma and allergy and medical conditions associated with asthma and allergy in this state;

(2) assess the resources and talent of institutions in this state as possible sites for research opportunities;

(3) analyze the impact of asthma and allergy on the economy of this state and on the health of the residents of this state; and

(4) make recommendations to the legislature and governor concerning research programs in asthma and allergy and funding alternatives for the programs.

(f) The asthma and allergy research advisory committee shall meet at least four times as determined by the presiding officer. A professional facilitator with experience in strategic planning shall facilitate meetings of the committee.

(g) A member of the asthma and allergy research advisory committee may not receive compensation for service on the committee but is entitled to reimbursement for reasonable and necessary travel expenses incurred by the member while conducting the business of the committee as provided by general law and the General Appropriations Act.

(h) Not later than December 1, 2002, the commissioner of public health shall submit a report prepared by the committee to the governor, lieutenant governor, and speaker of the house of representatives regarding asthma and allergy that comprehensively addresses the issues listed in Subsection (e) of this section.

SECTION _____. (a) The governor shall appoint members to the asthma and allergy research advisory committee not later than the 90th day after the effective date of this Act.

(b) The asthma and allergy research advisory committee is abolished January 1, 2003.

(c) This section and Section ___ of this Act requiring the establishment of the asthma and allergy research advisory committee expire September 1, 2003.

Floor Amendment No. 1 on Third Reading

Amend **SB 616** on third reading, page 2, line 13, Subchapter B, Chapter 531, Government Code, new Sec. 531.021912, by adding a new subsection (e) and renumbering accordingly.

The new subsection (e) shall read as follows:

(e) The commission may write the report under Subsection (d) in conjunction with an academic medical center or a nonprofit organization with experience in clinically focused, simulation-based disease management analysis.

The amendments were read.

On motion of Senator Van de Putte, the Senate concurred in the House amendments to **SB 616** by a viva voce vote.

SENATE BILL 1268 WITH HOUSE AMENDMENTS

Senator Madla called **SB 1268** 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.

Committee Amendment No. 1

Amend **SB 1268** by striking SECTION 2 of the bill (Engrossed version, page 1, lines 18-23) and substituting the following:

SECTION 2. Section 2253.021, Government Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) A governmental entity may not require a contractor for any public building or other construction contract to obtain a surety bond from any specific insurance or surety company, agent, or broker.

(g) For the purposes of this section, the General Services Commission shall negotiate with a specific insurance or surety company, agent, or broker to establish a surety program for the benefit of small businesses and historically underutilized businesses.

Floor Amendment No. 2

Amend Committee Amendment No. 1 to **SB 1268** by striking the text of the amendment (house committee report, page 3, lines 2-15) and substituting the following:

Amend **SB 1268** as follows:

(1) In SECTION 1 of the bill, in amended Section 2166.258(b), Government Code (house committee report, page 1, line 15), strike "any other [the bonding or]" and substitute "the bonding or".

(2) Strike SECTION 2 of the bill (Engrossed version, page 1, lines 18-23) and substitute the following:

SECTION 2. Section 2253.021, Government Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) A governmental entity may not require a contractor for any public building or other construction contract to obtain a surety bond from any specific insurance or surety company, agent, or broker.

(g) For the purposes of this section, the General Services Commission shall establish a program to provide surety technical assistance services for the benefit of small businesses and historically underutilized businesses. The commission may contract with insurance companies, surety companies, agents, or brokers to implement this program.

Floor Amendment No. 1 on Third Reading

Amend **SB 1268** on third reading as follows:

(1) In the SECTION of the bill amending Section 2166.258(b), Government Code, following amended Subsection (b), insert new Subsection (c) to read as follows and make appropriate conforming changes to the recital of that SECTION:

(c) For the purposes of this section, the General Services Commission shall establish a program to provide surety technical assistance services for the benefit of small businesses and historically underutilized businesses. The commission may contract with insurance companies, surety companies, agents, or brokers to implement this program.

(2) In the SECTION of the bill amending Section 2253.021, Government Code, strike Subsection (g), as added by the Wise amendment No. 2, and make appropriate conforming changes to the recital of that SECTION.

The amendments were read.

On motion of Senator Madla, the Senate concurred in the House amendments to **SB 1268** by a viva voce vote.

SENATE BILL 1282 WITH HOUSE AMENDMENT

Senator Lucio called **SB 1282** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1282** as follows:

(1) In SECTION 1 of the bill, in proposed Section 55.002, Transportation Code (Committee Printing, page 1, lines 20-23), strike proposed Subsection (a) and substitute the following:

(a) Using only money in the fund, the department shall fund:

(1) port transportation or facility projects; or

(2) port studies.

(2) In SECTION 1 of the bill, in proposed Section 55.005, Transportation Code (Committee Printing, page 3, lines 17-23), strike proposed Subsection (b) and substitute the following:

(b) The following money shall be credited to the fund:

(1) money received from gifts, grants, and donations; and

(2) interest earned on deposits and investments of the fund.

The amendment was read.

On motion of Senator Lucio, the Senate concurred in the House amendment to **SB 1282** by a viva voce vote.

SENATE BILL 1371 WITH HOUSE AMENDMENT

Senator Brown called **SB 1371** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1371** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to denial of renewal of a driver's license for failure to appear for certain offenses or to pay certain fines.

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

SECTION 1. Subsection (a), Section 706.002, Transportation Code, is amended to read as follows:

(a) A political subdivision may contract with the department to provide information necessary for the department to deny renewal of the driver's license of a

person who fails to appear for a complaint ~~or~~[;] citation[;] or ~~fails~~ ~~[court order]~~ to pay or satisfy a judgment ordering payment of a fine and cost in the manner ordered by the court in a matter ~~[a fine]~~ involving[:

~~[(1) a violation of a traffic law;~~

~~[(2) an offense under Section 543.009(b) or 543.107(b);~~

~~[(3) an offense under Section 38.10, Penal Code, if the underlying offense is a traffic offense; or~~

~~[(4)] any [other] offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14, Code of Criminal Procedure.~~

SECTION 2. Subsection (b), Section 706.003, Transportation Code, is amended to read as follows:

(b) The warning under Subsection (a):

(1) is in addition to any other warning required by law;

(2) must state in substance that if the person fails to appear in court as provided by law for the prosecution of the offense or if the person fails to pay or satisfy a judgment ordering the payment of a fine and cost in the manner ordered by the court, the person may be denied renewal of the person's driver's license; and

(3) may be printed on the same instrument as the citation.

SECTION 3. Section 706.004, Transportation Code, is amended to read as follows:

Sec. 706.004. DENIAL OF RENEWAL OF DRIVER'S LICENSE. (a) If a political subdivision has contracted with the department, on receiving the necessary information from the political subdivision the department may deny renewal of the person's driver's license for failure to appear based on a complaint ~~or~~[;] citation or failure to pay or satisfy a judgment ordering the payment of a fine and cost in the manner ordered by the court in a matter[; ~~or court order to pay a fine~~] involving ~~[a violation of a traffic law or]~~ an offense described by Section 706.002(a)[~~(2), (3), or (4)~~].

(b) The information must include:

(1) the name, date of birth, and driver's license number of the person;

(2) the nature and date of the alleged violation;

(3) a statement that the person failed to appear as required by law or failed to satisfy a judgment ordering the payment of a fine and cost in the manner ordered by the court in a matter involving ~~[for a traffic violation or]~~ an offense described by Section 706.002(a)[~~(2), (3), or (4)~~]; and

(4) any other information required by the department.

SECTION 4. Section 706.005, Transportation Code, is amended to read as follows:

Sec. 706.005. CLEARANCE NOTICE TO DEPARTMENT. (a) A political subdivision shall notify the department that there is no cause to continue to deny renewal of a person's driver's license based on the person's previous failure to appear or failure to pay or satisfy a judgment ordering the payment of a fine and cost in the manner ordered by the court in a matter involving ~~[for a traffic violation or]~~ an offense described by Section 706.002(a)[~~(2), (3), or (4)~~], on payment of a fee as provided by Section 706.006 and:

(1) ~~[the entry of a judgment against the person;~~

~~[(2)] the perfection of an appeal of the case for which the warrant of arrest was issued or judgment arose;~~

~~[(3)] the dismissal of the charge for which the warrant of arrest was issued or judgment arose;~~

~~[(4) the acquittal of the charge on which the person failed to appear;]~~

~~(3) [(5)] the posting of bond or the giving of other security to reinstate the charge for which the warrant was issued; [or]~~

~~(4) [(6)] the payment or discharge of the fine and cost owed on an outstanding judgment of the court; or~~

~~(5) other suitable arrangement to pay the fine and cost within the court's discretion [court order to pay a fine].~~

~~(b) The department may not continue to deny the renewal of the person's driver's license under this chapter after the department receives notice:~~

~~(1) under Subsection (a);~~

~~(2) that the person was acquitted of the charge on which the person failed to appear; or~~

~~(3) from the political subdivision that the failure to appear report or court order to pay a fine or cost relating to the person:~~

~~(A) was sent to the department in error; or~~

~~(B) has been destroyed in accordance with the political subdivision's records retention policy.~~

SECTION 5. Section 706.006, Transportation Code, is amended to read as follows:

Sec. 706.006. **PAYMENT OF ADMINISTRATIVE FEE.** (a) A person who fails to appear for a complaint or citation for an offense described by Section 706.002(a) shall be required to pay an administrative fee of \$30 for each violation for which the person failed to appear, unless the person is acquitted of the charges for which the person failed to appear. The person shall pay the fee when:

(1) the court enters judgment on the underlying offense reported to the department;

(2) the underlying offense is dismissed; or

(3) bond or other security is posted to reinstate the charge for which the warrant was issued [Unless a person has been acquitted of the offense for which the person failed to appear for a complaint, citation, or court order to pay a fine involving a violation of a traffic law or an offense described by Section 706.002(a)(2), (3), or (4), the political subdivision shall require the person to pay an administrative fee of \$30 for each violation for which the person failed to appear].

(b) A person who fails to pay or satisfy a judgment ordering the payment of a fine and cost in the manner the court orders shall be required to pay an administrative fee of \$30.

(c) The department may deny renewal of the driver's license of a person who does not pay a fee due under this section until the fee is paid. The fee required by this section [Subsection (a)] is in addition to any other fee required by law.

SECTION 6. (a) The change in law made by this Act applies 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 7. This Act takes effect September 1, 2001.

The amendment was read.

On motion of Senator Brown, the Senate concurred in the House amendment to **SB 1371** by a viva voce vote.

SENATE RESOLUTION 1193

Senator Ellis offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 77th Legislature, Regular Session, 2001, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on Senate Bill 536, relating to compensation for wrongful imprisonment, to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add a new section to the bill to read as follows:

SECTION 2. Section 403.074, Government Code, is amended by amending Subsections (b) and (d) and adding Subsection (g) to read as follows:

(b) Except as provided by Subsection (g), the [The] comptroller may not pay a miscellaneous claim unless the claim has been:

(1) verified and substantiated by an authorized employee of the state agency whose special fund or account is to be charged for the claim;

(2) verified by the attorney general as a legally enforceable obligation of the state; and

(3) certified by the claimant as due and unpaid.

(d) Except as provided by Subsection (g), the [The] comptroller may not pay under this section a single claim in excess of \$25,000, or an aggregate of claims by a single claimant during a biennium in excess of \$25,000. For the purposes of this subsection, all claims that were originally held by one person are considered held by a single claimant regardless of whether those claims were later transferred.

(g) The comptroller shall pay under this section any claim that satisfies the requirements of Subchapter B, Chapter 103, Civil Practice and Remedies Code, as provided by Section 103.151, Civil Practice and Remedies Code.

Explanation: This addition is necessary to ensure that the comptroller has the authority to issue payments as required by the changes to Chapter 103, Civil Practice and Remedies Code, that exceed the current maximum allowed for miscellaneous claims under Section 403.074, Government Code.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

SENATE BILL 354 WITH HOUSE AMENDMENTS

Senator Lindsay called **SB 354** 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 354** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the powers of a local government corporation.

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

SECTION 1. Section 431.101, Transportation Code, is amended by amending Subsection (e) and adding Subsections (g)-(k) to read as follows:

(e) Except as provided by Subsections (g), (h), and (i), a local government corporation is subject to all state law related to the design and construction of projects, including the procurement of design and construction services, that applies to the local government that created the corporation. If a local government corporation is created jointly by more than one local government and the local governments have different threshold contract amounts at which competitive bidding is required, the lowest amount applies to the corporation [Section 394.904(a), Local Government Code; applies to property and improvements owned by a local government corporation. Section 394.904(b) of that code applies to each contract awarded by the local government corporation].

(g) A corporation created by a municipality for the purpose of developing a convention center hotel project is exempt from competitive bidding requirements and other restrictions on the award of contracts, except as provided by Subsection (j).

(h) A corporation created by a municipality after September 1, 1999, for the purpose of developing water treatment and distribution facilities is exempt from competitive bidding requirements and other restrictions on the award of contracts for the limited purpose of completing projects as described in a project definition document issued before December 31, 2000. Any expansion of treatment facilities beyond the project described in the project definition document is exempt from the competitive bidding requirements except as provided by Subsection (j). Any expansion of distribution facilities by the corporation is subject to all state law that applies to the local government that created the corporation, as provided in Subsection (e).

(i) A local government corporation created for the primary purpose of assisting a municipality in implementing a project plan of a tax increment reinvestment zone created by the municipality pursuant to Chapter 311, Tax Code, is exempt from competitive bidding requirements and other restrictions on the award of contracts, except as provided by Subsection (j). Section 394.904(a), Local Government Code, applies to property and improvements owned by the corporation and Section 394.904(b), Local Government Code, applies to each contract awarded by the corporation.

(j) A local government corporation shall comply with Chapter 2254, Government Code.

(k) Any competitive bidding requirement or restriction imposed on the procedure regarding the lease, sale, or other disposition of property does not apply to a transaction related to the transfer of water rights by a local government corporation.

SECTION 2. Subchapter D, Chapter 431, Transportation Code, is amended by adding Sections 431.110 and 431.111 to read as follows:

Sec. 431.110. CONFLICT OF INTEREST IN CONTRACT. Chapter 171, Local Government Code, applies to the award of a contract by a local government corporation.

Sec. 431.111. ANNUAL REPORT TO COMPTROLLER. (a) Not later than February 1 of each year, the board of a local government corporation shall submit to the comptroller a report in the form required by the comptroller. The form for the report may not exceed one page in length.

(b) The report must include:

(1) a statement of the corporation's purpose;

(2) a statement of the corporation's total revenues and expenditures during the preceding fiscal year; and

(3) a summary of the corporation's activities during the preceding fiscal year, including any bonds issued and capital projects undertaken.

(c) The board shall submit a copy of the report to the local government that created the corporation.

SECTION 3. Except as provided by Sections 431.101(g), (h), and (i), Transportation Code, as added by this Act, the change in law made by this Act to Section 431.101(e), Transportation Code, applies to all contracts entered into by a local government corporation on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by that section as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

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

Floor Amendment No. 1

Amend **CSSB 354** as follows:

(1) In the recitation of SECTION 1 of the bill (Committee Printing, page 1, line 5), strike "(g)-(k)" and substitute "(g)-(j)".

(2) Strike Subsections (g)-(k), Section 431.101, Transportation Code, as added by SECTION 1 of the bill (Committee Printing, page 1, line 19, through page 2, line 26), and substitute the following:

(g) A corporation created by a municipality for the purpose of developing a convention center hotel project is exempt from competitive bidding requirements and other restrictions on the award of contracts.

(h) A corporation created by a municipality after September 1, 1999, for the purpose of developing water treatment and distribution facilities is exempt from competitive bidding requirements and other restrictions on the award of contracts for the limited purpose of completing projects as described in a project definition document issued before December 31, 2000. Any expansion of treatment facilities beyond the project described in the project definition document is exempt from the competitive bidding requirements but shall comply with Chapter 2254, Government Code. Any expansion of distribution facilities by the corporation is subject to all state law that applies to the local government that created the corporation, as provided in Subsection (e).

(i) A local government corporation created for the purpose of developing an area within a tax increment reinvestment zone created by a municipality pursuant to Chapter 311, Tax Code, is exempt from competitive bidding requirements but shall comply with Chapter 2254, Government Code. A corporation created for the purpose described by this subsection is also exempt from any competitive bidding requirement or restriction imposed on the procedure regarding the lease, sale, or other disposition of real property.

(j) Any competitive bidding requirement imposed on the procedure regarding the lease, sale, or other disposition of property does not apply to a transaction related to the transfer of water rights by a local government corporation.

Floor Amendment No. 2

Amend **CSSB 354** in SECTION 3 of the bill, in the transition language, on page 3, strike lines 22-24 and substitute:

"applies only to a contract, public notice of which is first published by a local government corporation on or after the effective date of this Act. A contract, public notice of which was first published by a local government corporation before the effective date of this Act is governed by".

Floor Amendment No. 1 on Third Reading

Amend **CSSB 354** on third reading in SECTION 3 by striking the language added by the Clark amendment, Floor Amendment No. 2, that reads "applies only to a contract, public notice of which is first published by a local government corporation on or after the effective date of this Act. A contract, public notice of which was first published by a local government corporation before the effective date of this Act is governed by" and substituting the following:

"applies to all contracts entered into by a local government corporation on or after the effective date of this Act unless a local government corporation first published notice of the contract on or before May 15, 2001. A contract, public notice of which was first published by a local government corporation on or before May 15, 2001, is governed by".

The amendments were read.

Senator Lindsay moved to concur in the House amendments to **SB 354**.

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

Present-not voting: Mr. President.

(Senator Brown in Chair)

SENATE BILL 1164 WITH HOUSE AMENDMENT

Senator Truan called **SB 1164** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1164** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to a five-year strategic infrastructure plan for state military installations.

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

SECTION 1. (a) The Office of Defense Affairs of the Texas Department of Economic Development, working in cooperation with the Texas Strategic Military Planning Commission, shall identify each defense-dependent community in the state and request that each community:

(1) coordinate with the Office of Defense Affairs and develop a five-year strategic infrastructure plan; and

(2) submit the plan to the office as soon as possible but not later than July 1, 2002.

(b) Each strategic infrastructure plan must include recommendations for specific state investments designed to:

(1) optimize the retention, stability, and growth of military installations and their defense-dependent communities; and

(2) increase the potential for private sector investment in, and future uses of, infrastructure associated with federal military installations and their defense-dependent communities.

(c) Not later than December 1, 2002, the Office of Defense Affairs shall:

(1) compile all plans submitted to the office under this Act into a single report;

(2) include in the report its own recommendations in relation to a comprehensive review of the submitted plans; and

(3) submit a copy of the report to the governor, the lieutenant governor, the speaker of the house of representatives, and the chair of each legislative committee with jurisdiction over defense affairs.

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

The amendment was read.

Senator Truan moved to concur in the House amendment to **SB 1164**.

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

Present-not voting: Mr. President.

SENATE BILL 1205 WITH HOUSE AMENDMENT

Senator Jackson called **SB 1205** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1205** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the exemption of certain business enterprises and courses of instruction from proprietary school certification.

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

SECTION 1. Subchapter A, Chapter 132, Education Code, is amended by adding Sections 132.003 and 132.004 to read as follows:

Sec. 132.003. COURSE EXEMPTION: DEVELOPMENT OF CAREER SKILLS; RECREATIONAL OR AVOCATIONAL SUBJECTS. (a) Except as provided by Subsection (f), a course of instruction is exempt from this chapter if:

- (1) the length of the course is 24 classroom hours or less;
 - (2) the fee for the course is less than \$500;
 - (3) the course is designed to teach:
 - (A) knowledge or skills to maintain or enhance a person's competency or performance in a business, trade, or occupation; or
 - (B) recreational or avocational subjects;
 - (4) on completion of the course, there is not an award of any credits or units toward the completion of another course of instruction of more than 24 classroom hours;
 - (5) the person offering the course makes available to registrants a written description of the course content and any refund policy not later than the 14th day before the date the course begins;
 - (6) the person offering the course offers in writing as required by Subdivision (5) a refund of the course fee to any registrant who:
 - (A) completes at least eight classroom hours or one-half of the course, whichever is less;
 - (B) is dissatisfied with the course; and
 - (C) requests a refund and provides in writing to the person a reasonable basis for the registrant's dissatisfaction not later than the 14th day after the date the course is concluded;
 - (7) for a course in which the instructor or the instructor's qualifications are different from the instructor or the instructor's qualifications stated in any advertising, publicity, or solicitation for the course, the person offering the course:
 - (A) offers in writing as required by Subdivision (5) a refund of the course fee to any registrant who, before the course begins, notifies the person that the registrant elects not to attend and requests a refund; and
 - (B) for the three-year period following the date the course is concluded, maintains records sufficient to identify the differences between advertised instructors and their qualifications and actual instructors and their qualifications; and
 - (8) for the three-year period following the date the course is concluded, the person offering the course maintains a record of:
 - (A) attendance of registrants;
 - (B) fees paid by registrants; and
 - (C) refunds paid to registrants.
- (b) A general refund policy that provides for a full refund of fees at any time before the course begins satisfies the requirements of Subsection (a)(7)(A), if the general refund policy is made available in writing to registrants or potential registrants as required by Subsection (a)(5).
- (c) If within the three-year record retention period the commission requests the production of records required under Subsection (a), a failure to produce the records for the commission by the person claiming an exemption for the course creates a rebuttable legal presumption that the course is not exempt from this chapter.
- (d) A course of instruction that is otherwise exempt under Section 132.002 is not required to comply with the requirements of this section to qualify for an exemption from this chapter.
- (e) In case of any conflict between the refund policy requirements of this section and the refund policy requirements of Section 132.061, this section prevails.
- (f) A course of instruction is not exempt under this section if the course is designed to teach or is represented by the person offering the course as teaching

knowledge of building, electrical, plumbing, mechanical, fire, or other similar technical codes applicable to the construction, remodeling, or repair of a home, building, or any other structure or improvement to real property in this state.

Sec. 132.004. EXCLUSIVE OFFERING OF EXEMPTED COURSES BY BUSINESS ENTERPRISE. A business enterprise that offers exclusively courses of instruction that are exempt under Section 132.002 or 132.003 is exempt from this chapter.

SECTION 2. Section 132.003, Education Code, as added by this Act, applies only to a course of instruction beginning on or after the effective date of this Act. A course of instruction beginning before the effective date of this Act is governed by the law in effect when the course began, and the former law is continued in effect for that purpose.

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

The amendment was read.

On motion of Senator Jackson, the Senate concurred in the House amendment to **SB 1205** by a viva voce vote.

SENATE BILL 1091 WITH HOUSE AMENDMENT

Senator Ellis called **SB 1091** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1091** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to limitations on payments for certain settlements or judgments.

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

SECTION 1. Section 109.002, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 109.002. APPLICABILITY; APPROPRIATIONS AND PAYMENTS FOR CERTAIN CLAIMS ~~[AS PROVIDED BY CHAPTER]~~. (a) This chapter applies to appropriations and payments made in relation to:

(1) a claim for which the state government is liable under Chapter 101 that results from the conduct of a state agency; and

(2) indemnification of an employee, member of a governing board, or other officer of a state agency under Chapter 104.

(b) Except as provided by Section 109.007, the legislature may not make an appropriation to pay a claim for which the state government is liable under Chapter 101 and that results from the conduct of a state agency except in accordance with Section 109.003 ~~[as provided by this chapter]~~.

(c) [(b)] Except as provided by Section 109.007, the legislature may not make an appropriation to indemnify an employee, member of a governing board, or other officer of a state agency under Chapter 104 except in accordance with Section 109.003 ~~[as provided by this chapter]~~.

SECTION 2. Section 109.004, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 109.004. **PAYMENT OF CLAIM BY ~~[DEDUCTION FROM]~~ AGENCY ~~[APPROPRIATION]~~**. (a) This section does not apply to the payment of a claim if the legislature has specifically:

- (1) identified the claim; and
- (2) appropriated money to pay the claim.

(b) Subject to Subsections (c) and (d), a state agency may ~~[(b) and (c), the comptroller shall reduce the amount of each appropriation made to]~~ pay a claim subject to this chapter only from money appropriated to [for a particular state agency from the appropriation made for] that [state] agency in the General Appropriations Act.

(c) ~~[(b)]~~ The amount paid under this section by [reduction in the appropriation for] a state agency for a single [particular] claim may not exceed a limitation imposed by the General Appropriations Act on the amount that may be paid by the agency on a single claim [\$5,000].

(d) ~~[(c)]~~ The total of all amounts paid by a state agency from money appropriated to the [reductions in the appropriation for a state] agency for any fiscal year under this section may not exceed a limitation imposed by the General Appropriations Act on the amount that may be paid under this section by a state [five percent of the appropriation made to that] agency for that fiscal year.

SECTION 3. Subsection (a), Section 109.005, Civil Practice and Remedies Code, is amended to read as follows:

- (a) The comptroller shall notify an affected state agency of:
- (1) each claim subject to this chapter paid by the comptroller under this chapter for that state agency;
 - (2) the amount of the claim;
 - (3) the amount of the claim paid from a special fund or account; and
 - (4) ~~[the amount of any reduction made under Section 109.004; and~~
 - ~~[(5)]~~ the subject matter of the claim.

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

The amendment was read.

On motion of Senator Ellis, the Senate concurred in the House amendment to **SB 1091** by a viva voce vote.

SENATE BILL 4 WITH HOUSE AMENDMENTS

Senator Shapiro called **SB 4** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 4** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the administration and use of the Texas Mobility Fund and the issuance of obligations for financing the construction, reconstruction, acquisition, and expansion of state highways and other mobility projects.

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

SECTION 1. Chapter 201, Transportation Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. OBLIGATIONS FOR
CERTAIN HIGHWAY AND MOBILITY PROJECTS

Sec. 201.941. DEFINITIONS. In this subchapter:

(1) "Comptroller's certification" means:

(A) as to long-term obligations, the certification made under Section 201.943(e); and

(B) as to short-term obligations, the certification made under Section 201.943(f).

(2) "Credit agreement" has the meaning assigned by Section 1371.001, Government Code.

(3) "Fund" means the Texas Mobility Fund.

(4) "Long-term obligations" means an issue or series of obligations the latest scheduled maturity of which is more than five years.

(5) "Maximum obligation amount" means the maximum aggregate principal amount of long-term obligations and short-term obligations that the commission may issue from time to time after receipt of the applicable comptroller's certification.

(6) "Obligations" means bonds, notes, and other public securities.

(7) "Short-term obligations" means an issue or series of obligations the latest scheduled maturity of which is five years or less.

Sec. 201.942. ADMINISTRATION OF FUND. The comptroller shall hold the fund, and the commission, through the department, shall manage, invest, use, and administer the fund as provided by this subchapter.

Sec. 201.943. AUTHORITY TO ISSUE OBLIGATIONS; PURPOSES; LIMITATIONS. (a) Subject to Subsections (e), (f), and (g), the commission by order or resolution may issue obligations in the name and on behalf of the state and the department and may enter into credit agreements related to the obligations. The obligations may be issued in multiple series and issues from time to time in an aggregate amount not exceeding the maximum obligation amount. The obligations may be issued on and may have the terms and provisions the commission determines appropriate and in the interests of the state. The obligations may be issued as long-term obligations, short-term obligations, or both. The latest scheduled maturity of an issue or series of obligations may not exceed 30 years.

(b) Obligations must be secured by and payable from a pledge of and lien on all or part of the money in the fund. Obligations may be additionally secured by and payable from credit agreements. The commission may pay amounts due on the obligations from discretionary money available to it that is not dedicated to or appropriated for other specific purposes.

(c) The commission may create within the fund accounts, reserves, and subfunds for purposes the commission finds appropriate and necessary in connection with the issuance of obligations.

(d) Obligations may be issued for one or more of the following purposes:

(1) to pay all or part of the costs of constructing, reconstructing, acquiring, and expanding state highways, including any necessary design and acquisition of rights-of-way, in the manner and locations determined by the commission that, according to conclusive findings of the commission, have an expected useful life, without material repair, of not less than 10 years;

(2) to provide participation by the state in the payment of part of the costs of constructing and providing publicly owned toll roads and other public transportation projects that are determined by the commission to be in the best interests of the state in its major goal of improving the mobility of the residents of the state;

(3) to create debt service reserve accounts;

(4) to pay interest on obligations for a period of not longer than two years;

(5) to refund or cancel outstanding obligations; and

(6) to pay the commission's costs of issuance.

(e) Long-term obligations in the amount proposed to be issued by the commission may not be issued unless the comptroller projects in a comptroller's certification that the amount of money dedicated to the fund pursuant to Subsection (f), Section 49-k, Article III, Texas Constitution, and required to be on deposit in the fund pursuant to Subsection (g), Section 49-k, Article III, Texas Constitution, and the investment earnings on that money, during each year of the period during which the proposed obligations are scheduled to be outstanding will be equal to at least 110 percent of the requirements to pay the principal of and interest on the proposed long-term obligations during that year.

(f) Short-term obligations in the amount proposed by the commission may not be issued unless the comptroller, in a comptroller's certification:

(1) assumes that the short-term obligations will be refunded and refinanced to mature over a 20-year period with level principal requirements and bearing interest at then current market rates, as determined by the comptroller; and

(2) projects that the amount of money dedicated to the fund pursuant to Subsection (f), Section 49-k, Article III, Texas Constitution, and required to be on deposit in the fund pursuant to Subsection (g), Section 49-k, Article III, Texas Constitution, and the investment earnings on that money, during each year of the assumed 20-year period will be equal to at least 110 percent of the requirements to pay the principal of and interest on the proposed refunding obligations during that year.

(g) The commission may agree to further restrictions in connection with the issuance of obligations and may retain independent professional consultants to make projections in addition to, but not instead of, those of the comptroller if required as a prerequisite to the issuance of the obligations.

(h) The commission has all powers necessary or appropriate to carry out this subchapter and to implement Section 49-k, Article III, Texas Constitution, including the powers granted to other bond-issuing governmental agencies and units and to nonprofit corporations by Chapters 1201, 1207, and 1371, Government Code.

(i) As required by Subsection (i), Section 49-k, Article III, Texas Constitution, proceedings authorizing obligations and related credit agreements to be issued and executed under this subchapter shall be submitted to the attorney general for approval as to their legality. If the attorney general finds that they will be issued in accordance with this subchapter and other applicable law, the attorney general shall approve them, and, after payment by the purchasers of the obligations in accordance with the terms of sale and after execution and delivery of the related credit agreements, the obligations and related credit agreements are incontestable for any cause.

(j) A comptroller's certification under this section must be based on economic data, forecasting methods, and projections that the comptroller determines are reliable.

(k) The holders of obligations and the counterparties to credit agreements have the rights granted in Subsection (k), Section 49-k, Article III, Texas Constitution.

Sec. 201.944. PLEDGE OF STATE'S FULL FAITH AND CREDIT. (a) The commission may guarantee on behalf of the state the payment of any obligations and credit agreements issued under Section 201.943 by pledging the full faith and credit of the state to the payment of the obligations and credit agreements in the event the revenue and money dedicated to the fund pursuant to Subsection (f), Section 49-k, Article III, Texas Constitution, and on deposit in the fund pursuant to Subsection (g), Section 49-k, Article III, Texas Constitution, are insufficient for that purpose.

(b) The exercise of the authority granted by Subsection (a) does not modify or relieve the commission from complying with Section 201.943(e) or (f) and does not permit the issuance of aggregate obligations in an amount exceeding the maximum obligation amount.

(c) If the commission exercises the authority granted by Subsection (a), the constitutional appropriation contained in Subsection (h), Section 49-k, Article III, Texas Constitution, shall be implemented and observed by all officers of the state during any period during which obligations and credit agreements are outstanding and unpaid.

Sec. 201.945. DEDICATION OF REVENUE TO FUND. Annually, the revenue of the state that is dedicated or appropriated to the fund pursuant to Subsection (f), Section 49-k, Article III, Texas Constitution, shall be deposited to the fund in accordance with Subsection (g), Section 49-k, Article III, Texas Constitution.

Sec. 201.946. INVESTMENT AND USES OF MONEY IN FUND. (a) Money in the fund may be invested in the investments permitted by law for the investment of money on deposit in the state highway fund.

(b) As a part of its covenants and commitments made in connection with the issuance of obligations and the execution of credit agreements, the commission may limit the types of investments eligible for investment of money in the fund but may not expand the types of investments to include any investments that are not authorized by Subsection (a).

(c) Income received from the investment of money in the fund shall be deposited in the fund, subject to requirements that may be imposed by the proceedings authorizing obligations to protect the tax-exempt status of interest payable on the obligations under the Internal Revenue Code of 1986.

(d) To the extent money is on deposit in the fund in amounts that are in excess of the money required by the proceedings authorizing the obligations and credit agreements to be retained on deposit, the commission may use the money for any purpose for which obligations may be issued under this subchapter.

SECTION 2. (a) This Act takes effect:

(1) on the date on which the constitutional amendment proposed by S.J.R. 16, 77th Legislature, Regular Session, 2001, takes effect; and

(2) only if S.B. 342, 77th Legislature, Regular Session, 2001, is enacted and becomes law.

(b) If the constitutional amendment proposed by S.J.R. 16 is not approved by the voters or if S.B. 342 does not become law, this Act has no effect.

Floor Amendment No. 1

Amend **CSSB 4** as follows:

- (1) On page 4, line 2, strike "(f)" and substitute "(e)".
- (2) On page 4, line 4, strike "(g)" and substitute "(f)".

- (3) On page 4, line 18, strike "(f)" and substitute "(e)".
- (4) On page 4, line 20, strike "(g)" and substitute "(f)".
- (5) On page 5, line 8, strike "(i)" and substitute "(h)".
- (6) On page 5, line 23, strike "(k)" and substitute "(j)".
- (7) On page 6, line 4, strike "(f)" and substitute "(e)".
- (8) On page 6, line 5, strike "(g)" and substitute "(f)".
- (9) On page 6, line 14, strike "(h)" and substitute "(g)".
- (10) On page 6, line 20, strike "(f)" and substitute "(e)".
- (11) On page 6, line 22, strike "(g)" and substitute "(f)".

Floor Amendment No. 2

Amend **CSSB 4** in SECTION 1 by adding a new Section 201.947, Transportation Code, to read as follows:

Sec. 201.947. STRATEGIC PLAN. The commission may not issue obligations under this subchapter before the department has developed a strategic plan that outlines how the money will be used and the benefit the state will derive from use of money in the fund.

The amendments were read.

On motion of Senator Shapiro, the Senate concurred in the House amendments to **SB 4** by a viva voce vote.

SENATE RULE 11.13 SUSPENDED (Consideration of Bills in Committee)

On motion of Senator Shapiro and by unanimous consent, Senate Rule 11.13 was suspended to grant the conference committee on **HB 6** permission to meet while the Senate was meeting today.

SENATE JOINT RESOLUTION 16 WITH HOUSE AMENDMENT

Senator Shapiro called **SJR 16** from the President's table for consideration of the House amendment to the resolution.

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

Amendment

Amend **SJR 16** by substituting in lieu thereof the following:

A JOINT RESOLUTION

proposing a constitutional amendment creating the Texas Mobility Fund and authorizing grants and loans of money and issuance of obligations for financing the construction, reconstruction, acquisition, operation, and expansion of state highways, turnpikes, toll roads, toll bridges, and other mobility projects.

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

SECTION 1. Article III, Texas Constitution, is amended by adding Section 49-k to read as follows:

Sec. 49-k. (a) In this section:

(1) "Commission" means the Texas Transportation Commission or its successor.

(2) "Comptroller" means the comptroller of public accounts.

(3) "Department" means the Texas Department of Transportation or its successor.

(4) "Fund" means the Texas Mobility Fund.

(5) "Obligations" means bonds, notes, and other public securities.

(b) The Texas Mobility Fund is created in the state treasury and shall be administered by the commission as a revolving fund to provide a method of financing the construction, reconstruction, acquisition, and expansion of state highways, including costs of any necessary design and costs of acquisition of rights-of-way, as determined by the commission in accordance with standards and procedures established by law.

(c) Money in the fund may also be used to provide participation by the state in the payment of a portion of the costs of constructing and providing publicly owned toll roads and other public transportation projects in accordance with the procedures, standards, and limitations established by law.

(d) The commission may issue and sell obligations of the state and enter into related credit agreements that are payable from and secured by a pledge of and a lien on all or part of the money on deposit in the fund in an aggregate principal amount that can be repaid when due from money on deposit in the fund, as that aggregate amount is projected by the comptroller in accordance with procedures established by law. The proceeds of the obligations must be deposited in the fund and used for one or more specific purposes authorized by law, including:

(1) refunding obligations and related credit agreements authorized by this section;

(2) creating reserves for payment of the obligations and related credit agreements;

(3) paying the costs of issuance; and

(4) paying interest on the obligations and related credit agreements for a period not longer than the maximum period established by law.

(e) The legislature by law may dedicate to the fund one or more specific sources or portions, or a specific amount, of the revenue, including taxes, and other money of the state that are not otherwise dedicated by this constitution. The legislature may not dedicate money from the collection of motor vehicle registration fees and taxes on motor fuels and lubricants dedicated by Section 7-a, Article VIII, of this constitution, but it may dedicate money received from other sources that are allocated to the same costs as those dedicated taxes and fees.

(f) Money dedicated as provided by this section is appropriated when received by the state, shall be deposited in the fund, and may be used as provided by this section and law enacted under this section without further appropriation. While money in the fund is pledged to the payment of any outstanding obligations or related credit agreements, the dedication of a specific source or portion of revenue, taxes, or other money made as provided by this section may not be reduced, rescinded, or repealed unless:

(1) the legislature by law dedicates a substitute or different source that is projected by the comptroller to be of a value equal to or greater than the source or amount being reduced, rescinded, or repealed and authorizes the commission to implement the authority granted by Subsection (g) of this section; and

(2) the commission implements the authority granted by the legislature pursuant to Subsection (g) of this section.

(g) In addition to the dedication of specified sources or amounts of revenue, taxes, or money as provided by Subsection (e) of this section, the legislature may by law authorize the commission to guarantee the payment of any obligations and credit agreements issued and executed by the commission under the authority of this section by pledging the full faith and credit of the state to that payment if dedicated revenue is insufficient for that purpose. If that authority is granted and is implemented by the commission, while any of the bonds, notes, other obligations, or credit agreements are outstanding and unpaid, and for any fiscal year during which the dedicated revenue, taxes, and money are insufficient to make all payments when due, there is appropriated, and there shall be deposited in the fund, out of the first money coming into the state treasury in each fiscal year that is not otherwise appropriated by this constitution, an amount that is sufficient to pay the principal of the obligations and agreements and the interest on the obligations and agreements that become due during that fiscal year, minus any amount in the fund that is available for that payment in accordance with applicable law.

(h) Proceedings authorizing obligations and related credit agreements to be issued and executed under the authority of this section shall be submitted to the attorney general for approval as to their legality. If the attorney general finds that they will be issued in accordance with this section and applicable law, the attorney general shall approve them, and, after payment by the purchasers of the obligations in accordance with the terms of sale and after execution and delivery of the related credit agreements, the obligations and related credit agreements are incontestable for any cause.

(i) Obligations and credit agreements issued or executed under the authority of this section may not be included in the computation required by Section 49-j, Article III, of this constitution, except that if money has been dedicated to the fund without specification of its source or the authority granted by Subsection (g) of this section has been implemented, the obligations and credit agreements shall be included to the extent the comptroller projects that general funds of the state, if any, will be required to pay amounts due on or on account of the obligations and credit agreements.

(j) The collection and deposit of the amounts required by this section, applicable law, and contract to be applied to the payment of obligations and credit agreements issued, executed, and secured under the authority of this section may be enforced by mandamus against the commission, the department, and the comptroller in a district court of Travis County, and the sovereign immunity of the state is waived for that purpose.

SECTION 2. Section 52-b, Article III, Texas Constitution, is amended to read as follows:

Sec. 52-b. The Legislature shall have no power or authority to in any manner lend the credit of the State or grant any public money to, or assume any indebtedness, present or future, bonded or otherwise, of any individual, person, firm, partnership, association, corporation, public corporation, public agency, or political subdivision of the State, or anyone else, which is now or hereafter authorized to construct, maintain or operate toll roads and turnpikes within this State except that the Legislature may authorize the Texas Department of Transportation to expend, grant, or loan money, from any source available, for the acquisition, construction, maintenance, or operation [costs] of turnpikes, toll roads, and [or] toll bridges [~~of the Texas Turnpike Authority, or successor agency, provided that any monies expended out of the state highway fund shall be repaid to the fund from tolls or other turnpike revenue~~].

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment creating the Texas Mobility Fund and authorizing grants and loans of money and issuance of obligations for financing the construction, reconstruction, acquisition, operation, and expansion of state highways, turnpikes, toll roads, toll bridges, and other mobility projects."

The amendment was read.

Senator Shapiro moved to concur in the House amendment to **SJR 16**.

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

Present-not voting: Mr. President.

SENATE BILL 1047 WITH HOUSE AMENDMENT

Senator Shapiro called **SB 1047** 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.

Committee Amendment No. 1

Amend **SB 1047** in SECTION 2 of the bill, in amended Section 2, Article 55.02, Code of Criminal Procedure (Senate Engrossment page 3, lines 16-26, and page 4, lines 1 and 2), by striking Subsection (e) and substituting a new Subsection (e) to read as follows:

(e) In addition to the information required by Subsection (b), if the petitioner relies on an entitlement to expunction under Article 55.01(d), the verified petition must include authenticated fingerprint records of the petitioner and must include the following or a statement explaining the reason the following is not included:

(1) the full name of the person arrested; and

(2) a statement that:

(A) the petitioner is not the person arrested and for whom the arrest records and files were created; and

(B) the petitioner did not give the person arrested consent to falsely identify himself or herself as the petitioner.

The amendment was read.

Senator Shapiro moved to concur in the House amendment to **SB 1047**.

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

Present-not voting: Mr. President.

SENATE BILL 430 WITH HOUSE AMENDMENT

Senator Shapiro called **SB 430** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 430** by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. (a) Chapter 1701, Occupations Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. VISITING RESOURCE OFFICER
IN PUBLIC SCHOOL

Sec. 1701.601. DEFINITION. In this subchapter, "school resource officer" means a peace officer who is assigned by the officer's employing political subdivision to provide:

- (1) a police presence at a public school;
- (2) safety or drug education to students of a public school; or
- (3) other similar services.

Sec. 1701.602. LICENSE REQUIRED. A peace officer who is a visiting school resource officer in a public school must be licensed as provided by this chapter.

Sec. 1701.603. FIREARMS ACCIDENT PREVENTION PROGRAM. (a) A peace officer who is a visiting school resource officer in a public elementary school shall at least once each school year offer to provide instruction to students in a firearms accident prevention program, as determined by the school district.

(b) A firearms accident prevention program must include the safety message, "Stop! Don't Touch. Leave the Area. Tell an Adult.", and may include instructional materials from the National Rifle Association Eddie Eagle GunSafe Program, including animated videos and activity books.

(b) Sections 1701.602 and 1701.603, Occupations Code, as added by this SECTION, apply beginning with the 2001-2002 school year.

The amendment was read.

On motion of Senator Shapiro, the Senate concurred in the House amendment to **SB 430** by a viva voce vote.

SENATE BILL 563 WITH HOUSE AMENDMENT

Senator Armbrister called **SB 563** 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 563** by striking SECTION 2 of the bill and substituting the following: SECTION 2. Article 59.03, Code of Criminal Procedure, is amended by adding Subsection (d) to read as follows:

(d) A person in the possession of property at the time a peace officer seizes the property under this chapter may at the time of seizure assert the person's interest in or right to the property. A peace officer who seizes property under this chapter may not at the time of seizure request, require, or in any manner induce any person, including a person who asserts an interest in or right to the property seized, to execute a document purporting to waive the person's interest in or rights to the property.

SECTION 3. Article 59.06(g), Code of Criminal Procedure, is amended to read as follows:

(g)(1) All law enforcement agencies and attorneys representing the state who receive proceeds or property under this chapter shall account for the seizure, forfeiture, receipt, and specific expenditure of all such proceeds and property in an audit, which is to be performed annually by the commissioners court or governing body of a municipality, as appropriate. The annual period of the audit for a law enforcement agency is the fiscal year of the appropriate county or municipality and the annual period for an attorney representing the state is the state fiscal year. The audit shall be completed on a form provided by the attorney general. Certified copies of the audit shall be delivered by the law enforcement agency or attorney representing the state to the comptroller's office and the attorney general not later than the 30th day after the date on which the annual period that is the subject of the audit ends.

(2) If a copy of the audit is not delivered to the attorney general within the period required by Subdivision (1), within five days after the end of the period the attorney general shall notify the law enforcement agency or the attorney representing the state of that fact. On a showing of good cause, the attorney general may grant an extension permitting the agency or attorney to deliver a copy of the audit after the period required by Subdivision (1) and before the 46th day after the date on which the annual period that is the subject of the audit ends. If the law enforcement agency or the attorney representing the state fails to establish good cause for not delivering the copy of the audit within the period required by Subdivision (1) or fails to deliver a copy of an audit within the extension period, the attorney general shall notify the comptroller of public accounts of that fact. On notice under this subdivision, the comptroller shall perform the audit otherwise required by Subdivision (1). At the conclusion of the audit, the comptroller shall forward a copy of the audit to the attorney general. The law enforcement agency or attorney representing the state is liable to the comptroller for the costs of the comptroller in performing the audit.

SECTION 4. Section 96.641, Education Code, is amended by adding Subsection (j) to read as follows:

(j) As part of the initial training and continuing education for police chiefs required under this section, the institute shall establish a program on asset forfeiture under Chapter 59, Code of Criminal Procedure. The program must include an examination of the best practices for educating peace officers about asset forfeiture and monitoring peace officers' compliance with laws relating to asset forfeiture.

SECTION 5. Section 1701.253, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on asset forfeiture under Chapter 59, Code of Criminal Procedure, for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

SECTION 6. Section 1701.402, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on asset forfeiture established by the commission under Section 1701.253(e).

SECTION 7. The change in law made by this Act to Article 59.03, Code of Criminal Procedure, applies only to a seizure of property that occurs on or after the

effective date of this Act. For a seizure that occurs before the effective date of this Act, the law in effect when the seizure occurred covers the proceeding, and the former law is continued in effect for that purpose.

SECTION 8. Article 59.06(g), Code of Criminal Procedure, as amended by this Act, applies to the first audit required to be performed by a commissioners court or governing body on or after the effective date of this Act.

SECTION 9. Not later than January 1, 2002:

(1) the Commission on Law Enforcement Officer Standards and Education shall establish an education and training program on asset forfeiture as required by Section 1701.253(e), Occupations Code, as added by this Act; and

(2) the Bill Blackwood Law Enforcement Management Institute of Texas shall establish a program on asset forfeiture as required by Section 96.641(j), Education Code, as added by this Act.

SECTION 10. A person who on the effective date of this Act holds an intermediate proficiency certificate issued by the Commission on Law Enforcement Officer Standards and Education or has held a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education for at least two years shall complete an education and training program on asset forfeiture established under Section 1701.253(e), Occupations Code, as added by this Act, not later than September 1, 2002.

SECTION 11. An individual appointed or elected as a police chief before the effective date of this Act shall complete a program on asset forfeiture established under Section 96.641(j), Education Code, as added by this Act, not later than September 1, 2002.

SECTION 12. Article 59.02(h), Code of Criminal Procedure, as added by this Act, applies to all property subject to Chapter 59, Code of Criminal Procedure, for which a final judgment has not been entered before the effective date of this Act.

SECTION 13. This Act takes effect September 1, 2001.

The amendment was read.

On motion of Senator Armbrister, the Senate concurred in the House amendment to **SB 563** by a viva voce vote.

SENATE BILL 292 WITH HOUSE AMENDMENTS

Senator Armbrister called **SB 292** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 292** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

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

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

SECTION 1. Sections 811.001(12) and (14), Government Code, are amended to read as follows:

(12) "Occupational death or disability" means death or disability from an injury or disease that directly results from a specific act or occurrence determinable by a definite time and place, and directly results from a ~~an inherent~~ risk or a hazard peculiar to and inherent in a duty that arises from and in the course of state employment.

(14) "Retiree" means a person who, except as provided by Section 812.203 ~~[or 814.209]~~, receives an annuity based on service that was credited to the person in a class of membership.

SECTION 2. Section 813.201(b), Government Code, is amended to read as follows:

(b) A member may not ~~[after August 31, 1997]~~ accrue or establish service credit in the employee class of membership when the total amount of service credit, multiplied by the percentage in effect for computing annuities under Section ~~814.103, 814.105, or 814.107~~ would exceed the number 100. When the maximum amount of service credit is accrued or established by a member in the employee or elected class, member and state contributions cease, although the member retains membership subject to Section 812.005.

SECTION 3. Section 813.504(a), Government Code, is amended to read as follows:

(a) A person ~~[member of the employee class]~~ may reestablish service credit previously canceled in the retirement system if:

(1) the person is a member of the employee class and at least six months have elapsed since the end of the month in which the cancellation became effective; or

(2) the person is:

(A) a former member of the employee class; and

(B) a participant in the optional retirement program under Chapter 830.

SECTION 4. Section 813.509, Government Code, is amended to read as follows:

Sec. 813.509. CREDIT FOR ACCUMULATED SICK LEAVE. (a) A member who holds a position included in the employee class of membership during the month that includes the effective date of the member's retirement and who retires based on service or a disability is entitled to service credit in the retirement system for the member's sick leave that has accumulated and is unused on the last day of employment.

(b) A death benefit designee under Section 814.301 or 814.302 of a member who holds a position included in the employee class of membership during the month that includes the member's date of death is entitled to service credit in the retirement system for the member's sick leave that has accumulated and is unused on the member's date of death.

(c) Sick leave is creditable in the retirement system at the rate of one month of service credit for each 20 days, or 160 hours, of accumulated sick leave and one month for each fraction of days or hours remaining after division of the total hours of accumulated sick leave by 160.

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

(e) A death benefit designee under Section 814.302 may use the deceased member's sick leave credit under this section to qualify for making a death benefit plan selection under Section 814.302.

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

(1) the name of each person;

(A) whose retirement from the department or agency, and from state service, became effective during the preceding month; or

(B) who died during the preceding month; and

(2) the amount of the person's accumulated sick leave on the last day of employment or date of death.

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

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

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

(j) [(g)] In this section, "sick leave" does not include credit granted under an agency sick-leave pool or under the Family and Medical Leave Act of 1993 (Pub. L. 103-3) and its subsequent amendments.

SECTION 5. Section 813.511, Government Code, as added by Chapter 1541, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

Sec. 813.511. CREDIT FOR ACCUMULATED ANNUAL LEAVE. (a) A member who holds a position included in the employee class of membership during the month that includes the effective date of the member's retirement and who retires based on service or a disability is entitled to service credit in the retirement system for the member's annual leave that has accumulated and is unused on the last day of employment.

(b) A death benefit designee under Section 814.301 or 814.302 of a member who holds a position included in the employee class of membership during the month that includes the member's date of death is entitled to service credit in the retirement system for the member's annual leave that has accumulated and is unused on the member's date of death.

(c) Annual leave is creditable in the retirement system at the rate of one month of service credit for each 20 days, or 160 hours, of accumulated annual leave and one month for each fraction of days or hours remaining after division of the total hours of accumulated annual leave by 160.

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

(e) A death benefit designee under Section 814.302 may use the deceased member's annual leave credit under this section to qualify for making a death benefit plan selection under Section 814.302.

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

(1) the name of each person;

(A) whose retirement from the department or agency, and from state service, became effective during the preceding month; or

(B) who died during the preceding month; and

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

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

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

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

SECTION 6. Subchapter F, Chapter 813, Government Code, is amended by adding Section 813.513 to read as follows:

Sec. 813.513. CREDIT PURCHASE OPTION. (a) An eligible member may establish not more than 60 months of equivalent membership service credit, including law enforcement or custodial officer service, in either the elected class or the employee class.

(b) A member is eligible to establish service credit under this section if the member has at least 120 months of actual membership service of the type of service that the member seeks to establish.

(c) A member may establish service credit under this section by depositing with the retirement system, for each month of service credit, the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the purchase of the service credit under this section, based on rates and tables recommended by the retirement system's actuary and adopted by the board of trustees.

(d) After a member makes the deposits required by this section, the retirement system shall grant the member one month of equivalent membership service credit for each month of credit approved.

(e) The retirement system shall deposit the amount of the actuarial present value of the service credit purchased in the member's individual account in the employees saving account.

(f) The board of trustees may adopt rules to administer this section, including rules that impose restrictions on the application of this section as necessary to cost-effectively administer this section.

SECTION 7. Subchapter A, Chapter 814, Government Code, is amended by adding Section 814.009 to read as follows:

Sec. 814.009. DEDUCTION FROM ANNUITY. (a) A person who receives an annuity under this subchapter may, on a form prescribed by and filed with the retirement system, authorize the retirement system to deduct from the person's monthly annuity payment the amount of a fee for the person's membership in a state employee organization that:

(1) is a certified eligible state employee organization under Section 403.0165; and

(2) has at least 2,500 retirees as members on January 1 preceding the fiscal year for which the deduction is made.

(b) An authorization made under this section remains in effect until:

(1) the person who receives the annuity modifies or revokes the authorization; or

(2) the state employee organization fails to meet the requirements of Subsection (a).

(c) The retirement system shall adopt rules to administer this section.

SECTION 8. Section 814.105(a), Government Code, is amended to read as follows:

(a) Except as otherwise provided by this section, the standard service retirement annuity for service credited in the employee class of membership is an amount computed as the member's average monthly compensation for service in that class for the 36 highest months of compensation multiplied by 2.3 ~~[2.25]~~ percent for each year of service credit in that class.

SECTION 9. Sections 814.107(b) and (f), Government Code, are amended to read as follows:

(b) The standard service retirement annuity payable for at least 20 years of service credit as a law enforcement or custodial officer is an amount computed on the basis of the member's average monthly compensation ~~[for that service]~~ for the 36 highest months of compensation in the employee class, times the sum of the percentage factor used in the computation of a standard service retirement annuity under Section 814.105 plus .5 percent.

(f) The standard combined service retirement annuity payable for at least 20 years of service credit as a law enforcement or custodial officer may not exceed 100 percent of the ~~[higher of the]~~ average compensation computed under ~~[Section 814.105 or the average compensation computed under]~~ Subsection (b).

SECTION 10. Section 814.108, Government Code, is amended by adding Subsection (h) to read as follows:

(h) A beneficiary designation that names a former spouse as beneficiary for a guaranteed optional annuity is invalid unless the designation is made after the date of the divorce.

SECTION 11. Section 814.1081(b), Government Code, is amended to read as follows:

(b) If a retiree files a request as provided by Subsection (a), the retirement system shall recompute the annuity as a standard service retirement annuity. The increase in

~~the [right to receive payment of an] annuity under [as adjusted as provided by] this section begins with the monthly [first] payment made to the retiree for the month following the month in which [that becomes due after the date] a request is filed as provided by Subsection (a).~~

SECTION 12. Section 814.201, Government Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) An application for an occupational disability retirement annuity may not be made after the second anniversary of the date the injury or disease that causes the disability occurs unless the executive director permits the application after that date because of a showing of good cause for delay.

(d) An applicant must submit to medical examination and provide other pertinent information as required by the retirement system.

SECTION 13. Section 814.202, Government Code, is amended by adding Subsection (e) to read as follows:

(e) A member otherwise eligible may not apply for or receive a nonoccupational disability annuity if the member is eligible for a service retirement annuity under Section 814.102 or 814.104.

SECTION 14. Subchapter C, Chapter 814, Government Code, is amended by adding Section 814.2055 to read as follows:

Sec. 814.2055. AVERAGE MONTHLY COMPENSATION. For purposes of Sections 814.206 and 814.207, "average monthly compensation" means:

(1) a member's average monthly compensation for service in the employee class for the 36 highest months of compensation; or

(2) a member's average monthly compensation for service in the employee class if a member retires with less than 36 months of service.

SECTION 15. Sections 814.206(a) and (b), Government Code, are amended to read as follows:

(a) Except as provided by Subsection (b) and Section 814.207, a standard disability retirement annuity for service credited in the employee class of membership is an amount computed at the rate of 2.3 ~~two~~ percent for each year of service credit in that class, times[:

~~[(1) the member's monthly compensation at the time of the disabling injury or disease, if the disability is occupational; or~~

~~[(2)] the member's average monthly compensation [for service in the employee class for the 36 highest months of compensation, if the disability is nonoccupational].~~

(b) A standard disability retirement annuity under this section may not be more than 100 percent of the average monthly [applicable rate of] compensation or, if occupational, not less than 35 percent of the average monthly compensation [applicable rate,] or \$150 a month, whichever is greater.

SECTION 16. Section 814.207, Government Code, is amended by amending Subsections (b), (c), and (e) and adding Subsection (f) to read as follows:

(b) Except as provided by Subsection (c), an occupational disability retirement annuity under this section is an amount, but not more than 100 percent, computed on the basis of the officer's average monthly compensation ~~[at the time of the disabling injury or disease]~~, times a percentage derived by application of Section 814.107(b).

(c) A disability retirement annuity under this section is not reducible because of age and may not be less than 50 percent of the officer's average monthly compensation regardless of the amount of service credited to the officer in the employee class.

(e) If a retiring member or retiree under this section presents evidence satisfactory to the retirement system that the person's condition makes the person incapable of gainful occupation and is considered a total disability under federal social security law, the retirement system shall increase the person's occupational disability retirement annuity to 100 percent of the officer's average monthly compensation [~~at the time of the disabling injury or disease~~].

(f) An annuity increase under Subsection (e) is not payable before the first month following the month in which the satisfactory evidence is received by the retirement system under Subsection (e).

SECTION 17. Section 814.401, Government Code, is amended by adding Subsection (e) to read as follows:

(e) A beneficiary designation that names a former spouse as beneficiary is invalid unless the designation is made after the date of the divorce.

SECTION 18. Section 814.505, Government Code, is amended by adding Subsection (i) to read as follows:

(i) A beneficiary designation that names a former spouse as beneficiary is invalid unless the designation is made after the date of the divorce.

SECTION 19. Section 815.102, Government Code, is amended to read as follows:

Sec. 815.102. RULEMAKING. (a) Subject to the limitations of this subtitle, the board of trustees may adopt rules for:

- (1) eligibility of membership;
- (2) the administration of the funds of the retirement system;
- (3) the program of supplemental benefits for law enforcement and custodial officers;

- (4) hearings on contested cases or disputed claims; and

- (5) [~~(4)~~] the transaction of any other business of the board.

(b) Rules adopted under this section related to a hearing on a contested case or disputed claim control over rules adopted under Section 2003.050.

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

(e) Subchapter C, Chapter 2260, does not apply to the retirement system. The acceptance of benefits by the retirement system under a contract does not waive immunity from suit or immunity from liability.

SECTION 21. Subchapter C, Chapter 815, Government Code, is amended by adding Section 815.213 to read as follows:

Sec. 815.213. ETHICS AND DISCLOSURE REQUIREMENTS. The board of trustees shall adopt an investment policy that includes a code of ethics. The code of ethics must contain standards of ethical conduct and disclosure requirements applicable to the members of the board of trustees and employees of the retirement system in the administration of this subtitle.

SECTION 22. Section 815.318, Government Code, is amended to read as follows:

Sec. 815.318. TRANSFER OF ASSETS FROM INTEREST ACCOUNT. (a) The retirement system [~~board of trustees~~] shall transfer from the interest account to the employees saving account amounts of interest computed under Section 815.311 at the following times:

- (1) as required during the fiscal year for a member's account in the retirement system that is closed before the last day of the fiscal year; and

(2) as of the last day of the fiscal year for a member's account that is not closed before the last day of the fiscal year.

(b) As required during the year, the retirement system ~~[board of trustees]~~ shall transfer from the interest account to the expense account amounts it determines necessary for the payment of the retirement system's expenses that exceed the amount of money available for those expenses.

(c) As of the last day of each fiscal year, the retirement system ~~[board of trustees]~~ shall transfer from the interest account to the retirement annuity reserve account an amount equal to:

(1) five percent of the mean amount in the retirement annuity reserve account for that fiscal year; or

(2) an amount computed at a greater rate if the actuary recommends the greater rate to finance adequately the annuities payable from the retirement annuity reserve account.

(d) After making the transfers required by this section, the retirement system ~~[board of trustees]~~, as of the last day of each fiscal year, shall transfer the amount remaining in the interest account to the state accumulation account.

SECTION 23. Section 815.402(a), Government Code, is amended to read as follows:

(a) Except as provided by Section 813.201, each ~~[Each]~~ payroll period, each department or agency of the state shall cause to be deducted from each member's compensation a contribution of:

(1) six percent of the compensation if the member is not a member of the legislature; or

(2) eight percent of the compensation if the member is a member of the legislature.

SECTION 24. Section 815.503, Government Code, is amended to read as follows:

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

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

(c) The records of a member, ~~[or] annuitant, retiree, beneficiary, or alternate payee~~ remain confidential after release to a person as authorized by this section. The records of a member, ~~[or] annuitant, retiree, beneficiary, or alternate payee~~ may become part of the public record of an administrative or judicial proceeding related to a contested case under Subtitle D or E or this subtitle, and the member, annuitant, retiree, beneficiary, or alternate payee waives the confidentiality of the records, including medical records unless the records are closed to public access by a protective order issued under applicable law.

(d) The retirement system may require a person to provide the person's social security number as the system considers necessary to ensure the proper administration of all services, benefits, plans, and programs under the retirement system's administration, oversight, or participation, or as otherwise required by state or federal law.

SECTION 25. Section 840.402, Government Code, is amended to read as follows:

Sec. 840.402. RETIREMENT SYSTEM RECORDS. Records of members, ~~[and] annuitants, retirees, beneficiaries, and alternate payees~~ of the retirement system are confidential in the manner provided by [within the terms of] Section 815.503.

SECTION 26. The provisions of any other Act of the 77th Legislature, Regular Session, that purport to impose ethics and disclosure requirements for the management or investment of state funds do not apply to the Employees Retirement System of Texas or the funds administered by that system regardless of the relative dates of enactment of the other Act and this Act.

SECTION 27. Sections 3(a)(2) and (8), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are amended to read as follows:

(2) "Annuitant" shall mean an officer or employee who has at least 10 ~~[three]~~ years of service as an eligible employee with a department whose employees are authorized to participate in the Texas employees uniform group insurance benefits program or who has at least five years of membership and five years of military service credited in the Employees Retirement System of Texas and who retires under:

(A) the jurisdiction of the Employees Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Subtitle B, D, or E of Title 8, Government Code, or Chapter 803, Government Code, that is based on at least 10 years of service credit or eligibility under Section 814.002 or 814.102, Government Code;

(B) the jurisdiction of the Teacher Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Subtitle C, Title 8, Government Code, or Chapter 803, Government Code, that is based on at least 10 years of service credit, whose last state employment prior to retirement, including employment by a public community/junior college, was as an employee of a department whose employees are authorized to participate in the Texas employees uniform group insurance program;

(C) the optional retirement program established by Chapter 830, Government Code, and either receives an annuity or is eligible to receive an annuity under that program, if the person either:

(i) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas or the Employees Retirement System of Texas based on at least 10 years of service credit had the person not elected to participate in the optional retirement program; or

(ii) is disabled as determined by the Employees Retirement System of Texas; or

(D) any other federal or state statutory retirement program to which an institution of higher education has made employer contributions, if the employee has met service requirements, age requirements, and other applicable requirements comparable to the requirements for retirement under the Teacher Retirement System of Texas, based on at least 10 years of service credit.

(8) "Dependent" shall mean the spouse of an employee or retired employee and:

(A) an unmarried child under 25 years of age, including an adopted child and a stepchild, foster child, or other child who is in a regular parent-child relationship;

(B) any such child, regardless of age, who the trustee determines lives with or whose care is provided by an employee or annuitant on a regular basis if:

(i) such child is mentally retarded or physically incapacitated to such an extent as to be dependent upon the employee or retired employee for care or support, as the trustee shall determine;

(ii) such child's coverage under this Act has not lapsed; and

(iii) such child is at least 25 years old and was enrolled as a participant in the health benefits coverage under the uniform program on the date of the child's 25th birthday; and

(C) any such child who is unmarried, regardless of age, for purposes of health benefits coverage under this Act, on expiration of the child's continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) and its subsequent amendments.

SECTION 28. Section 4, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 4. ADMINISTRATION. The administration and implementation of this Act are vested solely in the trustee. As it shall deem necessary to insure the proper administration of this Act and the insurance coverages, services, and benefits provided for or authorized by this Act, the trustee, as an agency of the State of Texas, shall have full power and authority to hire employees. The duties of such employees and their compensation shall be determined and assigned by the trustee. The trustee may, on a competitive bid basis, contract with a qualified, experienced firm of group insurance specialists or an administering firm who shall act for the trustee in a capacity as independent administrators and managers of the programs authorized under this Act. The independent administrator so selected by the trustee shall assist the trustee to insure the proper administration of the Act and the coverages, services, and benefits provided for or authorized by the Act and shall be paid by the trustee. Compensation of all persons employed by the trustee and their expenses shall be paid at such rates and in such amounts as the trustee shall approve, providing that in no case shall they be greater than those expenses paid for like or similar services. Also, as an agency of the State of Texas, the trustee shall have full power and authority to enter into interagency contracts with any department of the State of Texas. The interagency contracts shall provide for reimbursement to the state departments and shall define the services to be performed by the departments for the trustee. The trustee shall have full power and authority to promulgate all rules, regulations, plans, procedures, and orders reasonably necessary to implement and carry out the purposes and provisions of this Act in all its particulars, including but not limited to the following:

(a) preparation of specifications for coverages provided by authority of this Act;

(b) prescribing the time at which and the conditions under which an employee, annuitant, or dependent is eligible for all coverages provided under this Act;

(c) determination of the methods and procedures of claims administration;

(d) determination of the amount of employee payroll deductions and reductions and the responsibility of establishing procedures by which such deductions and reductions shall be made;

(e) establishment of procedures by which the trustee shall decide contested cases arising from programs or coverages provided under authority of this Act;

(f) continuing study of the operation of all coverages provided under this Act, including such matters as gross and net cost, administration costs, benefits, utilization of benefits, and claims administration;

(g) administration of the Employees Life, Accident, and Health Insurance and Benefits Fund, providing for the beginning and ending dates of coverages of employees and annuitants and their dependents under all benefit plans;

(h) adoption of all rules and regulations consistent with the provisions of this Act and its purpose as it deems necessary to carry out its statutory duties and responsibilities;

(i) development of basic plans of group coverages and benefits applicable to all employees. The trustee also may provide for optional group coverages and benefits in addition to the basic plan;

(j) to provide either additional statewide optional programs or individual agency optional programs as the trustee may determine is appropriate;

(k) design, development, adoption, implementation, and administration of a cafeteria plan;

(l) purchase of liability insurance for the coverage of the trustees, employees, and agents of the board of trustees in such amounts as the board of trustees, in its sole discretion, considers reasonable and necessary;

(m) development of health benefits plans that permit access to high quality, cost-effective health care;

(n) designing, implementing, and monitoring health benefits plan features intended to discourage excessive utilization, promote efficiency, and contain costs;

(o) development and continuing refinement of a health care benefit strategy consistent with evolving benefit delivery systems; ~~and~~

(p) development of a funding strategy to efficiently utilize employer contributions to achieve the purposes of this Act and which is reasonable and assures employees and retired employee annuitants a fair choice among health benefit plans as set out in Section 14 of this Act; ~~and~~

(q) appointment of an advisory committee for the program provided by this Act under the terms provided by Section 815.509, Government Code.

SECTION 29. Section 4B(c), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(c) A decision by the executive director under Subsection (a) ~~or (a-1)~~ of this section may be appealed only to the trustee. An appeal to the trustee is a contested case under the administrative procedure law, Chapter 2001, Government Code. Standing to pursue an administrative appeal under this section is limited to employees, participants, annuitants, and covered dependents participating in the Texas employees uniform group insurance program or, after the death of an employee, ~~[a]~~ participant, annuitant, or covered dependent, to the person's ~~[participant's]~~ estate, personal representative, heirs at law, or designated beneficiary.

SECTION 30. Section 5(j), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(j) The trustee may not contract for or provide a plan of coverage that:

(1) excludes or limits coverage or services for acquired immune deficiency syndrome, as defined by the Centers for Disease Control of the United States Public Health Service, or human immunodeficiency virus infection; or

(2) provides coverage for serious mental illness that is less extensive than the minimum coverage [~~provided~~] for serious mental illness required by Section 3, Article 3.51-14, Insurance Code [~~any physical illness~~].

SECTION 31. Section 10, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

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

(d) The trustee may require an individual to disclose the individual's social security number as the trustee considers necessary to properly administer this Act and any coverage, service, or benefit authorized by this Act or as otherwise required by state or federal law.

SECTION 32. The Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code) is amended by adding Section 10A to read as follows:

Sec. 10A. EXCLUSIVE REMEDY. The remedies provided under this Act are the exclusive remedies available to an employee, participant, annuitant, or dependent.

SECTION 33. Section 13A, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 13A. ADMINISTRATIVE PROCESS AND SANCTIONS FOR INSURANCE PROGRAM VIOLATIONS [~~EXPULSION FROM GROUP INSURANCE PROGRAM~~]. (a) The Employees Retirement System of Texas [~~After notice and hearing as provided by this section, the trustee~~] may impose one or more sanctions described by this section against [~~expel from participation in the Texas employees uniform group insurance program~~] any employee, participant, annuitant, or dependent who:

(1) submits a materially false [fraudulent] claim or application for coverage under [or has defrauded or attempted to defraud] any health maintenance organization or insurance or benefits plan offered under the program;

(2) defrauds or attempts to defraud any health maintenance organization or insurance or benefits plan offered under the program;

(3) obtains or induces the extension of coverage under any program provided under this Act by a materially negligent or intentional misrepresentation, a failure to disclose material information, or fraud; or

(4) induces the extension of coverage under any program provided under this Act by supplying false information on an application for coverage or in related documentation or in any communication.

(b) On receipt of a complaint or on its own motion, if the retirement system determines that an employee, participant, annuitant, or dependent has engaged in conduct described by Subsection (a) of this section, the retirement system [trustee] may:

(1) expel from the program the [call and hold a hearing to determine whether an] employee, participant, annuitant, or dependent;

(2) impose limitations on the person's participation in the program;

(3) rescind any coverage obtained or extended as a result of the conduct under Subsection (a) of this section;

(4) deny a claim arising from coverage; or

(5) require the person to reimburse the Employees Life, Accident, and Health Insurance and Benefits Trust Account for any benefit obtained as a result of the conduct.

(c) An expulsion under Subsection (b) of this section may be permanent or for a specified period. A rescission of coverage under Subsection (b) of this section may be from the date of inception of the coverage or from the date of the prohibited conduct [has submitted a fraudulent claim or application for coverage under or has defrauded or attempted to defraud any health maintenance organization or insurance or benefits plan offered under the Texas employees uniform group insurance program].

(d) A person may appeal a determination made under Subsection (a) or (b) of this section only to the board of trustees.

[(e)] A proceeding under this subsection [section] is a contested case under the administrative procedure law, Chapter 2001, Government Code. Section 4B of this Act applies to an appeal to the board of trustees under this subsection. The appellant has the burden of proof and any sanction imposed is stayed during an appeal under this subsection. If a person fails to make a timely appeal, any sanction relates back to the date of the retirement system's determination.

[(d)] At the conclusion of the hearing, if the trustee issues a decision that finds that the accused employee, annuitant, or dependent submitted a fraudulent claim or application for coverage or has defrauded or attempted to defraud any health maintenance organization or insurance or benefits plan offered under the Texas employees uniform group insurance program, the trustee shall expel the employee, annuitant, or dependent from participation in the program.

[(e)] An appeal of a decision of the trustee under this subsection [section] is under the substantial evidence rule.

(e) [(f)] An employee, participant, annuitant, or dependent expelled from the Texas employees uniform group insurance program may not participate in any plan of coverage offered by the program for the [a] period determined by the retirement system [trustee of not more than five years from the date the expulsion from the program takes effect].

SECTION 34. The Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code) is amended by adding Section 13A-1 to read as follows:

Sec. 13A-1. MISCONDUCT INFORMATION. (a) This section applies to:

- (1) the Employees Retirement System of Texas;
- (2) a carrier or other insurance company or health maintenance organization;
- (3) an administering firm or other insurance support organization that provides information or services to the Texas employees uniform group insurance program or the Employees Retirement System of Texas;
- (4) an agent or third-party administrator authorized under this Act or licensed under the insurance laws of this state;
- (5) a regulatory authority or department; and
- (6) a board member, executive director, employee, auditor, or actuary of an entity described by this section.

(b) A person may collect from, furnish to, or exchange with another person information, including medical records or other confidential information, to the extent the person considers necessary to detect or to impose a sanction for a criminal act, a misrepresentation, or nondisclosure that is related to an attempt to obtain coverage, payment, reimbursement, or a benefit under this Act.

(c) A person who acts under Subsection (b) of this section is immune from suit and criminal or civil liability unless the person acts with malice or intent to defraud.

SECTION 35. Section 13B, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by adding Subsection (e) to read as follows:

(e) The trustee may adopt rules for the use of a debit card or other similar technology for claims administration under this section.

SECTION 36. Section 615.001, Government Code, is amended to read as follows:

Sec. 615.001. DEFINITION. In this chapter, "minor child" means a child who:

(1) [;] on the date of the death of an individual listed under Section 615.003, is younger than 18 years of age; and

(2) if the child is not a biological or adopted child, was claimed as a dependent on the federal income tax return of an individual listed under Section 615.003 for the year preceding the year of the individual's death.

SECTION 37. Section 615.023(b), Government Code, is amended to read as follows:

(b) A child's entitlement to assistance payable under this section ends on the child's ~~18th~~ ^[21st] birthday. At that time, payments to any other surviving minor children shall be adjusted, as necessary, to conform to the amounts payable under Subsection (a).

SECTION 38. Section 615.042(a), Government Code, is amended to read as follows:

(a) The ~~[board of trustees of the]~~ Employees Retirement System of Texas shall notify the comptroller of the ~~retirement system's~~ ^[board's] determination that a claim under this chapter is valid and justifies payment.

SECTION 39. Section 615.043, Government Code, is amended to read as follows:

Sec. 615.043. DENIAL OF CLAIM. If the ~~[board of trustees of the]~~ Employees Retirement System of Texas denies a claim, the ~~retirement system~~ ^[board] shall send a notice of the denial to:

- (1) the person making the claim; or
- (2) the duly qualified guardian or legal representative of a surviving minor child or dependent sibling, if a claim is being made on behalf of the child or sibling.

SECTION 40. Section 615.044, Government Code, is amended to read as follows:

Sec. 615.044. APPEALS. (a) An eligible survivor or the eligible survivor's legal representative [A person] whose claim for payment [to a surviving spouse, minor child, or dependent parent or sibling] is denied [or the person's legal representative] may appeal the denial to the board of trustees of the Employees Retirement System of Texas [a district court of the residence of the surviving spouse, minor child, or dependent parent or sibling or to a district court in Travis County].

(b) An appeal under this section is considered to be an appeal of a contested case under Chapter 2001 and shall be conducted as provided by Section 815.511 [must be made not later than the 20th day after the date the claimant or legal representative receives notice of the denial].

(c) Judicial review of a decision under this section is under the substantial evidence rule as provided by Chapter 2001 [Proceedings on the appeal are by trial de novo, as that term is used in an appeal from a justice court to the county court].

SECTION 41. Subchapter C, Chapter 615, Government Code, is amended by adding Section 615.045 to read as follows:

Sec. 615.045. RECORDS. (a) Records of individuals listed by Section 615.003 and of survivors eligible for benefits under this chapter that are in the custody of the retirement system or a carrier, administering firm as defined by the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), or other governmental agency acting with or on behalf of the retirement system are confidential, not subject to public disclosure, and exempt from the public information provisions of Chapter 552, except as otherwise provided by this section.

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

(c) The records of individuals listed by Section 615.003 and of eligible survivors remain confidential after release to a person as authorized by this section. The records of individuals listed by Section 615.003 and of eligible survivors may become part of the public record of an administrative or judicial proceeding related to an appeal filed under this chapter, unless the records are closed to public access by a protective order issued under applicable law.

SECTION 42. Section 615.074(a), Government Code, is amended to read as follows:

(a) An eligible surviving dependent who is a minor child is entitled to continue health insurance coverage until the earlier of [the dependent]:

- (1) the date the dependent reaches the age of 18 [21] years; or
- (2) the date the dependent becomes eligible for group health insurance through another employer.

SECTION 43. Section 814.1041, Government Code, as amended by Chapters 1013 and 1541, Acts of the 76th Legislature, Regular Session, 1999, is reenacted to read as follows:

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

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

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

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

SECTION 44. The following sections are repealed:

(1) Section 813.511, Government Code, as added by Chapter 226, Acts of the 76th Legislature, Regular Session, 1999;

(2) Section 814.1042, Government Code, as added by Chapter 264, Acts of the 76th Legislature, Regular Session, 1999;

(3) Section 814.1043, Government Code;

(4) Section 840.101, Government Code;

(5) Section 4B(a-1), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code); and

(6) Section 18, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code).

SECTION 45. (a) This section applies only to annuities that are described by Sections 814.104, 814.1041, 814.107, 814.206, 814.207, 814.301, 814.302, and 814.305, Government Code, and that are based on service retirements, disability retirements, or deaths that occurred before September 1, 2001.

(b) Payments of an annuity adjusted under this section shall begin with the first payment that becomes due after December 31, 2001.

(c) The amount of an annuity payable on the first day the annuity became payable shall be adjusted for plan changes to reflect:

(1) current multiplier values and, if applicable, the amount of service credited at the time of retirement or death, as specified by Section 814.105, 814.107, 814.206, 814.207, 814.301, or 814.302, Government Code;

(2) current applicable actuarial reduction factors for benefits elected under Section 814.108, 814.1081, 814.1082, 814.206(d), 814.301(a), or 814.302(a), Government Code; and

(3) current minimum standard annuity and maximum service percentage values specified by Section 814.105(b), Government Code.

(d) Annuities shall be adjusted for changes described by Sections 814.008, 814.108(d), and 814.1081, Government Code, that occurred after the date the annuity first became payable and before January 1, 2002.

(e) After any adjustment under Subsection (c) or (d) of this section is made, the amount of the annuities shall be adjusted under this section by multiplying the amount of each annuity by a fraction, not less than one, the numerator of which is the Consumer Price Index for all urban consumers as reported by the U.S. Bureau of Labor Statistics (CPI-U) for December 2001, and the denominator of which is the CPI-U for August of the fiscal year in which the annuity first became payable. If the CPI-U for December 2001 is not available for a computation under this subsection, the numerator is the most recent month's CPI-U available at the time of the computation, increased for each month from that month until December 2001 by a factor equal to the average of the monthly percentage increases in the CPI-U for the 12-month period ending with that month.

(f) The board of trustees of the Employees Retirement System of Texas may adopt rules to implement this section.

(g) An adjustment under this section may not cause a reduction in the amount of an annuity payable immediately before December 31, 2001.

(h) Adjustments made under this section and rules adopted by the board of trustees under this section must comply with Section 401(a) of the Internal Revenue Code of 1986, as amended, and rules adopted under that section and Section 811.006, Government Code.

SECTION 46. (a) The change in law made by this Act to Section 3(a)(2), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), does not apply to a person who, on August 31, 2001:

(1) was an eligible employee with an employer whose employees were eligible to participate in the uniform group insurance program;

(2) was eligible to participate as a retiree in the uniform group insurance program; or

(3) had satisfied any service requirements under the Texas Employees Uniform Group Insurance Benefits Act for participation as a retiree in the uniform group insurance program.

(b) The participation in the uniform group insurance program of a person described in Subsection (a) of this section is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 47. The change in law made by this Act to Section 3(a)(8)(B), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), applies only to a dependent who was not covered by the basic coverage of a health benefits plan under Article 3.50-2, Insurance Code, on August 31, 2001.

SECTION 48. (a) Except as provided by this section, this Act takes effect September 1, 2001.

(b) Section 813.513, Government Code, as added by this Act, takes effect January 1, 2002.

Floor Amendment No. 1

Amend **CSSB 292**, in SECTION 7 of the bill, in proposed Subsection (a)(1) of Section 814.009, Government Code, after the semicolon (house committee printing page 8, line 15), by striking "and" and substituting "or".

Floor Amendment No. 1 on Third Reading

Amend **CSSB 292** on third reading as follows:

(1) Following SECTION 45 of the bill (House Committee Report Printing, page 36, between lines 6 and 7) insert the following new SECTION, appropriately numbered:

SECTION _____. Chapter 810, Section 810.001, Government Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) "civil union" means any relationship status that grants to the parties of the relationship the same legal protections, benefits, and responsibilities as are granted to the spouses of a marriage.

(h) For purposes of this title, the state may not give effect to a:

(1) public act, record, or judicial proceeding that recognizes or validates a marriage or civil union between persons of the same sex; or

(2) right or claim asserted as a result of the purported marriage or civil union.

Amendment No. 2 on Third Reading

Amend Floor Amendment No. 1 on third reading to **CSSB 292** on third reading as follows:

Add the following new subsection at the end of the amendment:

(i) Subsection (h) of this section does not preclude the enforcement in this state of an order issued in another state relating to child custody, child support, or property division, including a qualified domestic relations order.

The amendments were read.

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

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 292** 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 Armbrister, Chair; Fraser, Shapiro, Bivins, and Cain.

SENATE BILL 273 WITH HOUSE AMENDMENTS

Senator Armbrister called **SB 273** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 273** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to systems and programs administered by the Teacher Retirement System of Texas; providing a penalty.

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

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

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

SECTION 2. Section 822.006, Government Code, is amended to read as follows:

Sec. 822.006. RESUMPTION OF MEMBERSHIP AFTER TERMINATION. A person whose membership in the retirement system has been terminated and who resumes membership must enter the retirement system on the same terms as a person entering service for the first time and is not entitled to credit for previous or other terminated service unless it is reinstated under Section 823.501 ~~[or 823.502]~~.

SECTION 3. Subchapter E, Chapter 823, Government Code, is amended by adding Section 823.405 to read as follows:

Sec. 823.405. CREDIT PURCHASE OPTION. (a) A member may establish not more than three years of equivalent membership service credit under this section if the member has at least seven years of actual membership service.

(b) A member may establish service credit under this section by depositing with the retirement system, for each year of service credit, the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the purchase of the service credit under this section, based on rates and tables recommended by the retirement system's actuary and adopted by the board of trustees.

(c) After a member makes the deposits required by this section, the retirement system shall grant the member one year of equivalent membership service credit for each year of credit approved.

(d) The retirement system shall deposit the amount of the actuarial present value of the service credit purchased in the member's individual account in the employee's saving account.

(e) The board of trustees may adopt rules to administer this section.

SECTION 4. Sections 824.203(a) and (e), Government Code, are amended to read as follows:

(a) Except as provided by Subsections (c), (d), and (e), the standard service retirement annuity is an amount computed on the basis of the member's average annual compensation for the three years of service, whether or not consecutive, in which the member received the highest annual compensation, times 2.3 ~~[2.2]~~ percent for each year of service credit in the retirement system.

(e) The annual standard service retirement annuity for a person who immediately before retirement holds a position as a classroom teacher or full-time librarian, or the annual death benefit annuity based on the service of a member who at the time of death held a position as a classroom teacher or full-time librarian, may not be less than an amount computed on the basis of the minimum annual salary provided by the Education Code for a classroom teacher or full-time librarian, multiplied by 2.3 [~~2.2~~] percent for each year of service credit in the retirement system.

SECTION 5. Sections 824.404(b)-(d), Government Code, are amended to read as follows:

(b) If the designated beneficiary is the spouse or a dependent parent of the decedent, the beneficiary may elect to receive for life a monthly benefit of \$250 [~~\$200~~], beginning immediately or on the date the beneficiary becomes 65 years old, whichever is later.

(c) If the designated beneficiary is the spouse of the decedent and has one or more children less than 18 years old or has custody of one or more children of the decedent who are less than 18 years old, the designated beneficiary may elect to receive:

(1) a monthly benefit of \$350 [~~\$300~~] payable until the youngest child becomes 18 years old; and

(2) when the youngest child has attained the age of 18, a monthly benefit for life of \$250 [~~\$200~~], beginning on the date the beneficiary becomes 65 years old.

(d) If the designated beneficiary or beneficiaries are the decedent's dependent children who are less than 18 years old, their guardian may elect to receive for them:

(1) a monthly benefit of \$350 [~~\$300~~], payable as long as two or more children are less than 18 years old; and

(2) a monthly benefit of \$250 [~~\$200~~], payable as long as only one child is less than 18 years old.

SECTION 6. Section 824.602, Government Code, is amended by amending Subsection (a) and adding Subsection (m) to read as follows:

(a) Subject to Section 825.506, the retirement system may not, under Section 824.601, withhold a monthly benefit payment if the retiree is employed in a Texas public educational institution:

(1) as a substitute only with pay not more than the daily rate of substitute pay established by the employer and, if the retiree is a disability retiree, the employment has not exceeded a total of 90 days in the school year;

(2) in a position, other than as a substitute, on no more than a one-half time basis for the month;

(3) in one or more positions on as much as a full-time basis, if the work occurs in not more than six months of a school year that begins after the retiree's effective date of retirement;

(4) in a position, other than as a substitute, on no more than a one-half time basis for no more than 90 days in the school year, if the retiree is a disability retiree; ~~or~~

(5) in a position as a classroom teacher on as much as a full-time basis, if the retiree has retired under Section 824.202(a) [~~without reduction for retirement at an early age~~], is certified under Subchapter B, Chapter 21, Education Code, to teach the subjects assigned, is teaching in an acute shortage area as determined [~~defined~~] by the board of trustees of a school district as provided by Subsection (m) [~~commissioner of education~~], and has been separated from service with all public schools for at least 12 months; or

(6) as a bus driver for a school district on as much as a full-time basis, if the retiree has retired under Section 824.202(a).

(m) The board of trustees of a school district by rule shall determine, for purposes of Subsection (a), whether there are acute shortage areas in the district. A determination must be based on acute shortage area guidelines that are adopted by the commissioner of education. The guidelines adopted by the commissioner of education must include:

(1) a list of acute shortage areas;

(2) suggested criteria for identifying local acute shortage areas; and

(3) a requirement that a certified applicant for a position as a classroom teacher who is not a retiree be given preference in hiring.

SECTION 7. Section 824.603, Government Code, is amended to read as follows:

Sec. 824.603. EXCLUSION FROM CREDIT. Employment of a retiree described by Section 824.602(a) does not entitle a retiree to additional service credit, and the retiree so employed is not required to make contributions to the system from compensation for that employment. [~~Such employment may not be considered in applying the provisions of Section 823.502.~~]

SECTION 8. Section 824.805(b), Government Code, is amended to read as follows:

(b) A member participating in the plan on September 1, 2001 [~~1999~~], may, before December 31, 2001 [~~September 1, 2000~~], elect to discontinue participation in the plan on a form prescribed by and filed with the retirement system. The retirement system shall make account transfers and change records for a member who elects under this subsection to discontinue participation in the plan as if the member had never participated in the plan.

SECTION 9. Section 825.307(a), Government Code, is amended to read as follows:

(a) The retirement system shall deposit in a member's individual account in the member savings account:

(1) the amount of contributions to the retirement system that is deducted from the member's compensation;

(2) the portion of a deposit made on or after resumption of membership that represents the amount of retirement benefits received;

(3) the portion of a deposit to reinstate service credit previously canceled that represents the amount withdrawn or refunded;

(4) the portion of a deposit to establish membership service credit previously waived that is required by Section 823.202(b)(1);

(5) [~~the portion of a deposit to establish membership service credit for service performed after retirement that is required by Section 823.502(c)(3);~~]

[(6)] the portion of a deposit to establish military service credit required by Section 823.302(c);

[(6)] [(7)] the portion of a deposit to establish equivalent membership service credit required by Section 823.401(d), 823.402(e)(1) or (e)(2), 823.404(c), 823.405, or 823.3021(f)(1); and

[(7)] [(8)] interest earned on money in the account as provided by Subsections (b) and (c) and Section 825.313(c).

SECTION 10. Section 825.308, Government Code, is amended to read as follows:

Sec. 825.308. STATE CONTRIBUTION ACCOUNT. The retirement system shall deposit in the state contribution account:

(1) all state contributions to the retirement system required by Section 825.404;

(2) amounts from the interest account as provided by Section 825.313(b)(2) [~~825.313(b)(5)~~];

(3) retirement annuities waived or forfeited in accordance with Section 824.601 or 824.004;

(4) fees collected under Section 825.403(h);

(5) fees and interest for reinstatement of service credit or establishment of membership service credit as provided by Section 823.202 or [~~;~~] 823.501 [~~;~~ ~~or~~ 823.502];

(6) the portion of a deposit required by Section 823.302 to establish military service credit that represents a fee; and

(7) the portion of a deposit required by Section 823.401(e) to establish out-of-state service credit that represents a fee.

SECTION 11. Section 825.408(a), Government Code, is amended to read as follows:

(a) An employing district that fails to remit, before the fifth business [~~11th~~] day after the last day of a month, all member and employer deposits and documentation of the deposits required by this subchapter to be remitted by the district for the month shall pay to the retirement system, in addition to the deposits, interest on the unpaid or undocumented amounts at an annual rate compounded monthly. The rate of interest is the rate established under Section 825.313(b)(1), plus two percent. Interest required under this section is creditable to the interest account. On request, the retirement system may grant a waiver of the deadline imposed by this subsection based on a district's financial or technological resources.

SECTION 12. The heading of Section 825.507, Government Code, is amended to read as follows:

Sec. 825.507. RECORD CONFIDENTIALITY [~~OF INFORMATION ABOUT MEMBERS, RETIREES, ANNUITANTS, BENEFICIARIES, OR ALTERNATE PAYEES~~].

SECTION 13. Sections 825.507(a)-(d), Government Code, are amended to read as follows:

(a) Records of a member, retiree, annuitant, beneficiary, or alternate payee [~~Information contained in records~~] that are in the custody of the retirement system or of an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system are [~~concerning an individual member, retiree, annuitant, beneficiary, or alternate payee is~~] confidential and not subject to public disclosure and are exempt from the public access provisions of Chapter 552, except as otherwise provided by this section.

(b) The retirement system may release records to [~~under Section 552.101, and may not be disclosed in a form identifiable with a specific individual unless~~]:

(1) a member, retiree, annuitant, beneficiary, or alternate payee or to an authorized attorney, family member, or representative acting on behalf of the member or annuitant [~~the information is disclosed to~~]:

(A) the individual or the individual's attorney, guardian, executor, administrator, conservator, or other person who the executive director determines is acting in the interest of the individual or the individual's estate];

(2) ~~[(B)]~~ a spouse or former spouse of the individual if the executive director determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system;

(3) an administrator, carrier, or agent or attorney acting on behalf of the retirement system;

(4) another governmental agency having a legitimate need for the information to perform the purposes of the retirement system ~~[(C) a governmental official or employee if the executive director determines that disclosure of the information requested is reasonably necessary to the performance of the duties of the official or employee; or~~

~~[(D) a person authorized by the individual in writing to receive the information]; or~~

(5) a party in response ~~[(2) the information is disclosed pursuant] to a subpoena issued under applicable law [and the executive director determines that the individual will have a reasonable opportunity to contest the subpoena].~~

(c) The records of a member, retiree, annuitant, beneficiary, or alternate payee remain confidential after release to a person as authorized by this section.

(d) [(b)] This section does not prevent the disclosure of:

(1) the status or identity of an individual as a member, former member, retiree, deceased member or retiree, beneficiary, or alternate payee of the retirement system; or

(2) information that does not identify a specific individual.

~~[(e) The executive director may designate other employees of the retirement system to make the necessary determinations under Subsection (a):~~

~~[(d) A determination and disclosure under Subsection (a) may be made without notice to the individual member, retiree, annuitant, beneficiary, or alternate payee.]~~

SECTION 14. Notwithstanding Section 824.601, Government Code, the retirement system may not withhold a monthly benefit payment from a retiree who:

(1) before January 1, 2001, retired under Section 824.202(a), Government Code, without a reduction for retirement at an early age;

(2) is employed as a classroom teacher in a Texas public educational institution that is in an acute shortage area as defined by the commissioner of education; and

(3) is certified under Subchapter B, Chapter 21, Education Code, to teach the subjects that the retiree is assigned to teach.

SECTION 15. Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), is amended by adding Sections 4, 5, 6, 7, 8, 9, 10, and 11 to read as follows:

Sec. 4. In this section and in Sections 5, 6, 7, 8, 9, 10, and 11 of this Act:

(1) "Board of trustees" means the board of trustees of the Teacher Retirement System of Texas.

(2) "Educational institution" means a school district or an open-enrollment charter school.

(3) "Eligible qualified investment" means a qualified investment product offered by a company that:

(A) is certified to the board of trustees under Section 5 of this Act; or

(B) is eligible to certify to the board of trustees under Section 8 of this Act.

(4) "Employee" means an employee of an educational institution.

(5) "Qualified investment product" means an annuity or investment that:

(A) meets the requirements of Section 403(b), Internal Revenue Code of 1986, and its subsequent amendments;

(B) complies with applicable federal insurance and securities laws and regulations; and

(C) complies with applicable state insurance and securities laws and rules.

(6) "Retirement system" means the Teacher Retirement System of Texas.

(7) "Salary reduction agreement" means an agreement between an educational institution and an employee to reduce the employee's salary for the purpose of making direct contributions to or purchases of a qualified investment product.

Sec. 5. (a) An educational institution may enter into a salary reduction agreement with an employee of the institution only if the qualified investment product is an eligible qualified investment product.

(b) A company may certify to the retirement system that the company offers a qualified investment product that is an annuity contract under this section if the company:

(1) is authorized to issue annuity contracts in this state at the time the application is filed; and

(2) complies with the standards adopted under Section 6 of this Act.

(c) A company that certifies under this section shall notify the retirement system if, at any time, the company is not in compliance with Subsection (b) of this section or if an investment product that the company offers under this Act is the subject of a salary reduction agreement and the investment product is not a qualified investment product.

(d) The retirement system shall establish and maintain a list of companies that have certified under this section. The list must be available on the retirement system's Internet website.

Sec. 6. (a) A company is eligible to certify to the retirement system under Section 5 of this Act if the company satisfies the following financial strength criteria:

(1) the company's actuarial opinions required under Articles 1.11 and 3.28, Insurance Code, have not been adverse or qualified in the five years preceding the date the application is filed;

(2) the company is subject to the annual audit requirements of Article 1.15A, Insurance Code, and its most recent audit of financial strength conducted by an independent certified public accountant is timely filed and does not indicate the existence of any material adverse financial conditions in the company for the five years preceding the filing deadline for the audit;

(3) the company has not been the subject of an administrative or regulatory action by the Texas Department of Insurance under Article 1.32 or 21.28-A or Section 83.051, Insurance Code, in the five years preceding the date the application is filed;

(4) the company has maintained during the five years preceding the date the application is filed an average of at least 400 percent of the authorized control level, as calculated in accordance with the risk-based capital and surplus requirements established in rules adopted by the Texas Department of Insurance; and

(5) the company has not fallen below 300 percent of the authorized control level, as calculated in accordance with the risk-based capital and surplus established in

rules adopted by the Texas Department of Insurance, at any time in the five years preceding the date the application is filed.

(b) For purposes of Subsection (a)(4) of this section, the company must calculate the five-year average on the same date each year.

(c) The board of trustees may not unreasonably restrict an employee's access to a reasonable variety of qualified investment products.

(d) After consultation with the Texas Department of Insurance and the State Securities Board, the retirement system may adopt rules to administer this section and Sections 5 and 7 of this Act.

(e) The retirement system shall refer all complaints about qualified investment products to the appropriate division of the Texas Department of Insurance or the State Securities Board.

(f) The Texas Department of Insurance and the State Securities Board shall cooperate with the retirement system in the administration of this Act and shall notify the retirement system of any action or determination regarding a product or a company that violates Section 5 of this Act.

(g) The retirement system shall reject the certification of a company if the retirement system receives notice under Subsection (f) of this section of a violation regarding the company or the company's product. The company may recertify to the board of trustees.

(h) The retirement system shall prescribe the notice required by Section 11 of this Act.

Sec. 7. (a) The retirement system may collect a fee, not to exceed the administrative cost to the retirement system, from a company that certifies or recertifies under Section 6 or 8 of this Act. The fee for certification or recertification may not exceed \$5,000.

(b) Fees collected under this section shall be deposited to the credit of the 403(b) administrative trust fund. The 403(b) administrative trust fund is created as a trust fund with the comptroller and shall be administered by the retirement system as a trustee on behalf of the participants in qualified investment products offered under this Act.

Sec. 8. (a) A company that offers qualified investment products other than annuity contracts may certify to the retirement system based on rules adopted by the board of trustees. The rules shall be based on reasonable factors, including:

(1) the financial strength of the companies offering products; and

(2) the administrative cost to employees.

(b) The retirement system shall establish and maintain a list of companies that provide certification under this section. The list must be available on the retirement system's Internet website.

Sec. 9. An educational institution may not:

(1) refuse to enter into a salary reduction agreement with an employee if the qualified investment product that is the subject of the salary reduction is an eligible qualified investment;

(2) require or coerce an employee's attendance at any meeting at which qualified investment products are marketed;

(3) limit the ability of an employee to initiate, change, or terminate a qualified investment product at any time the employee chooses;

(4) grant exclusive access to an employee by discriminating against or imposing barriers to any agent, broker, or company that provides qualified investment products under this Act;

(5) grant exclusive access to information about an employee's financial information, including information about an employee's qualified investment products, to a company or agent offering qualified investment products unless the employee consents in writing to the access;

(6) accept any benefit from a company that offers qualified investment products; or

(7) use public funds to recommend a qualified investment product offered by a company or agent.

Sec. 10. (a) A person commits an offense if the person:

(1) sells or offers for sale a qualified investment product that is not an eligible qualified investment product and that the person reasonably believes will be the subject of a salary reduction agreement;

(2) violates Article 21.07A, Insurance Code, with regard to a qualified investment product that the person knows will be the subject of a salary reduction agreement;

(3) engages in activity described by Section 4, Article 21.21, Insurance Code, with regard to a qualified investment product that the person knows will be the subject of a salary reduction agreement; or

(4) violates Article 21.02-1, Insurance Code, with regard to a qualified investment product that the person knows will be the subject of a salary reduction agreement.

(b) An offense under this section is a Class A misdemeanor.

Sec. 11. (a) A person who offers to sell an annuity contract that is or will likely be the subject of a salary reduction agreement shall provide notice to a potential purchaser as provided by this section.

(b) The retirement system shall make the notice available on request and post the notice on the retirement system's website.

(c) The notice required under this section must:

(1) be in at least 14-point type;

(2) contain spaces for:

(A) the name, address, and telephone number of the agent and company offering the annuity contract for sale;

(B) the name, address, and telephone number of the company underwriting the annuity;

(C) the license number of the person offering to sell the product;

(D) the name of the state agency that issued the person's license; and

(E) with respect to fixed annuity products:

(i) the current interest rate or the formula used to calculate the current rate of interest;

(ii) the guaranteed rate of interest and the percentage of the premium to which the interest rate applies;

(iii) how interest is compounded;

(iv) the amount of any up-front, surrender, withdrawal, deferred sales, and market value adjustment charges or any other contract restriction that exceeds 10 years;

(v) the time, if any, the annuity is required to be in force before the purchaser is entitled to the full bonus accumulation value;

(vi) the manner in which the amount of the guaranteed benefit under the annuity is computed;

(vii) whether loans are available under the annuity;
(viii) what restrictions, if any, apply to the availability of money attributable to the value of the annuity once the purchaser is retired or separated from the employment of the employer; and

(ix) the amount of any other fees, costs, or penalties; and

(3) state, in plain language:

(A) that the company offering the annuity must comply with Section 5 of this Act;

(B) that the potential purchaser may contact the retirement system or access its website to determine which companies are in compliance with Section 5 of this Act;

(C) the civil remedies available to the employee;

(D) that the employee may purchase any qualified investment product;

(E) the name and telephone number of the Texas Department of Insurance division that specializes in consumer protection; and

(F) the name and telephone number of the attorney general's division that specializes in consumer protection.

(d) In addition to the notice required by this section, a variable annuity must be accompanied by the prospectus and any other purchasing information required by law.

(e) An equity-based index contract must state in plain language how the annuity contract will be credited with growth.

(f) If a notice and other information required under this section is not provided, any annuity contract for which the notice is required is voidable at the discretion of the purchaser. Not later than the 30th day after the date an employee notifies the seller in writing of the employee's election to void the contract, the seller shall refund to the employee:

(1) the amount of all consideration paid to the purchaser; and

(2) 10 percent interest up to the date the employee provides the notice to the seller.

(g) A seller who receives a refund request under this section is not required to make a refund otherwise required by this section if, not later than the 30th day after the date the seller receives a request for a refund from the employee, the seller provides a copy of the notice signed by the employee.

SECTION 16. Section 16(h), Article 3.50-4, Insurance Code, is amended to read as follows:

(h) An employing district that fails to remit, before the fifth business [11th] day after the last day of the month, all member deposits required by this section to be remitted by the district for the month shall pay to the Texas public school retired employees group insurance fund, in addition to the deposits, interest on the unpaid amounts at the annual rate of six percent compounded monthly. On request, the trustee may grant a waiver of the deadline imposed by this subsection based on a district's financial or technological resources.

SECTION 17. Article 3.50-4a, Insurance Code, as added by Chapter 372, Acts of the 76th Legislature, Regular Session, 1999, is amended by adding Subsection (f) to read as follows:

(f) A premium or contribution on a policy, insurance contract, or agreement authorized as provided by this article is not subject to any state tax, regulatory fee, or surcharge, including a premium or maintenance tax or fee.

SECTION 18. Article 3.50-4a, Insurance Code, as added by Chapter 1540, Acts of the 76th Legislature, Regular Session, 1999, is amended by adding Section 6 to read as follows:

Sec. 6. EXEMPTION FROM STATE TAXES AND FEES. A premium or contribution on a policy, insurance contract, or agreement authorized as provided by this article is not subject to any state tax, regulatory fee, or surcharge, including a premium or maintenance tax or fee.

SECTION 19. Article 21.02-1, Insurance Code, is amended to read as follows:

Art. 21.02-1. PENALTY FOR UNLAWFULLY ACTING AS AGENT. Except as provided by Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), whoever [Whoever] shall do or perform any of the acts or things mentioned in the first article of this chapter for any insurance company referred to in said article without such company having first complied with the requirements of the laws of this State, shall be fined not less than five hundred nor more than one thousand dollars.

SECTION 20. Article 21.07A, Insurance Code, is amended to read as follows:

Art. 21.07A. PENALTY FOR ACTING AS, OR EMPLOYING, LIFE, HEALTH, OR ACCIDENT INSURANCE AGENT WITHOUT LICENSE. (a) Any person who shall act as a life, health or accident insurance agent without having first obtained a license as herein provided, or who shall solicit life, health or accident insurance or act as a life, health or accident agent without having been appointed and designated by some duly authorized life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company, or association, or organization, local mutual aid association, or statewide mutual association to do so as herein provided, or any person who shall solicit life, health or accident insurance or act as an agent for any person or insurance company or association not authorized to do business in Texas; or any officer or representative of any life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company or association, or organization, local mutual aid association, or statewide mutual association who shall knowingly contract with or appoint as an agent any person who does not have a valid and outstanding license, as herein provided shall be guilty of a misdemeanor and, upon conviction, shall be fined any sum not in excess of Five Hundred Dollars (\$500) and shall be barred from receiving a license as an insurance agent for a period of at least two (2) years.

(b) Notwithstanding Subsection (a) of this article, a violation of this article that is described by Section 10(a)(2), Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), is subject to prosecution under that section.

SECTION 21. Section 17.46(b), Business & Commerce Code, is amended to read as follows:

(b) Except as provided in Subsection (d) of this section, the term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:

- (1) passing off goods or services as those of another;
- (2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;

(4) using deceptive representations or designations of geographic origin in connection with goods or services;

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;

(6) representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;

(7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) disparaging the goods, services, or business of another by false or misleading representation of facts;

(9) advertising goods or services with intent not to sell them as advertised;

(10) advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity;

(11) making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;

(12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

(13) knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;

(14) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(15) basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;

(16) disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;

(17) advertising of any sale by fraudulently representing that a person is going out of business;

(18) using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

(19) representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve, provided, however, that nothing in this subchapter shall be construed to expand the implied warranty of merchantability as defined in Sections 2.314 through 2.318 and Sections 2A.212 through 2A.216 of the Business & Commerce Code to involve obligations in excess of those which are appropriate to the goods;

(20) promoting a pyramid promotional scheme, as defined by Section 17.461;

(21) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced;

(22) filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit he neither knew or had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract;

(23) the failure to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed;

(24) using the term "corporation," "incorporated," or an abbreviation of either of those terms in the name of a business entity that is not incorporated under the laws of this state or another jurisdiction; [or]

(25) taking advantage of a disaster declared by the governor under Chapter 418, Government Code, by:

(A) selling or leasing fuel, food, medicine, or another necessity at an exorbitant or excessive price; or

(B) demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, or another necessity; or

(26) selling, offering to sell, or illegally promoting an annuity contract under Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), with the intent that the annuity contract will be the subject of a salary reduction agreement, as defined by that Act, if the annuity contract is not an eligible qualified investment under that Act.

SECTION 22. Section 17.49, Business & Commerce Code, is amended by amending Subsection (c) and adding Subsection (h) to read as follows:

(c) Nothing in this subchapter shall apply to a claim for damages based on the rendering of a professional service, the essence of which is the providing of advice, judgment, opinion, or similar professional skill. This exemption does not apply to:

(1) an express misrepresentation of a material fact that cannot be characterized as advice, judgment, or opinion;

(2) a failure to disclose information in violation of Section 17.46(b)(23);

(3) an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion; [or]

(4) breach of an express warranty that cannot be characterized as advice, judgment, or opinion; or

(5) a violation of Section 17.46(b)(26).

(h) A person who violates Section 17.46(b)(26) is jointly and severally liable under that subdivision for actual damages, court costs, and attorney's fees. Subject to Chapter 41, Civil Practice and Remedies Code, exemplary damages may be awarded in the event of fraud or malice.

SECTION 23. The following sections of the Government Code are repealed:

- (1) Section 823.502; and
- (2) Section 824.306.

SECTION 24. (a) Monthly payments of a death or retirement benefit annuity by the Teacher Retirement System of Texas are increased in accordance with this section beginning with the payment due at the end of September 2001.

(b) The increase does not apply to payments under Section 824.304(a), 824.404, or 824.501, Government Code.

(c) For the purpose of computing the monthly payments of annuities for retirees who retired on or before August 31, 2000, the amount of the monthly payment is equal to the amount of the last monthly payment made before the effective date of this Act multiplied by 1.06.

(d) After making the computations required by Subsection (c) of this section, the Teacher Retirement System of Texas shall increase each annuity payable by the system beginning on September 1, 2001, other than an annuity under Section 824.304(a), 824.404, or 824.501, Government Code, by 4.5 percent, which is a benefit equivalent to the benefit provided by using a 2.3-percent multiplier for computing annuities.

SECTION 25. (a) The changes in law made to Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), by this Act do not apply to a contract between an employee of a school district or open-enrollment charter school and a company offering investments or annuities that was entered into or is entered into under Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), before June 1, 2003.

(b) A contract described by Subsection (a) of this section is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 26. The Teacher Retirement System of Texas shall prescribe the notice required by Section 6(h), Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), not later than December 1, 2001.

SECTION 27. (a) Except as otherwise provided by this section, this Act takes effect September 1, 2001.

(b) The changes in law made by this Act to the following laws take effect June 1, 2003:

- (1) Sections 9, 10, and 11, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes);
- (2) Article 21.02-1, Insurance Code;
- (3) Article 21.07A, Insurance Code;
- (4) Section 17.46, Business & Commerce Code; and
- (5) Section 17.49, Business & Commerce Code.

(c) The changes in law made by this Act to the following laws take effect September 1, 2002:

- (1) Section 825.408(a), Government Code; and
- (2) Section 16(h), Article 3.50-4, Insurance Code.

(d) The changes in law made by this Act to Section 824.602, Government Code, apply beginning with the 2001-2002 school year. Section 824.602,

Government Code, as amended by this Act, takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Section 824.602, Government Code, as amended by this Act, takes effect September 1, 2001.

Floor Amendment No. 1

Amend **CSSB 273** (house committee printing) as follows:

(1) In SECTION 11 of the bill, in amended Subsection (a), Section 825.408, Government Code (page 8, line 9), strike "fifth business [~~11th~~] day" and substitute "seventh business [~~11th~~] day".

(2) In SECTION 14 of the bill, in proposed Subdivision (1) of that section (page 11, lines 3 and 4), strike ", without a reduction for retirement at an early age".

(3) In SECTION 14 of the bill, in proposed Subdivision (2) of that section (page 11, line 7), strike "defined by the commissioner of education" and substitute "determined by the board of trustees of a school district as provided by Section 824.602(m), Government Code".

(4) In SECTION 16 of the bill, in amended Subsection (h), Section 16, Article 3.50-4, Insurance Code (page 20, line 14), strike "fifth" and substitute "seventh".

Floor Amendment No. 2

Amend **CSSB 273** (house committee printing) as follows:

(1) In SECTION 15 of the bill, strike proposed Subsection (c) of Section 6, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes) (page 14, lines 15 through 17), and reletter subsequent subsections appropriately.

(2) In SECTION 15 of the bill, in proposed Subsection (d) of Section 6, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), strike "adopt rules to administer this section and Sections 5 and 7" (page 14, line 20) and insert "adopt rules only to administer this section and Sections 5, 7, 8, and 11".

(3) In SECTION 15 of the bill, in proposed Subsection (g) of Section 6, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), between "reject" and "the" (page 15, line 3), insert "or revoke".

(4) In SECTION 15 of the bill, in proposed Subsection (g) of Section 6, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), between "section" and "of" (page 15, line 5), insert "or Section 5(c) of this Act".

(5) In SECTION 15 of the bill, in proposed Subsection (h) of Section 6, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), between "the" and "notice" (page 15, line 8), insert "uniform".

(6) In SECTION 15 of the bill, after proposed Section 6(h), Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes) (page 15, between lines 9 and 10), insert the following appropriately lettered subsection:

() A certification or recertification remains in effect for five years unless rejected or revoked.

(7) In SECTION 15 of the bill, in proposed Subdivision (6) of Section 9, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), between "company" and "that" (page 16, line 24), insert "or from an agent or affiliate of a company".

(8) In SECTION 15 of the bill, in proposed Subdivision (7) of Section 9, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), between "agent" and the period (page 16, line 27), insert "of a company that offers a qualified investment product".

(9) In SECTION 15 of the bill, in proposed Subsection (b) of Section 11, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), between "post the" and "notice" (page 17, line 22), insert "form of the".

(10) In SECTION 15 of the bill, in proposed Subsection (c) of Section 11, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), between "must" and the colon (page 17, line 23), insert "be uniform and".

(11) In SECTION 15 of the bill, in proposed Subsection (c)(2)(E)(vii) of Section 11, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), between "are" and "available" (page 18, line 21), insert "guaranteed to be".

(12) In SECTION 15 of the bill, in proposed Subsection (c)(2)(E)(viii) of Section 11, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), after the semicolon (page 18, line 26), strike "and".

(13) In SECTION 15 of the bill, after proposed Subsection (c)(2)(E)(ix) of Section 11, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes) (page 19, line 1), strike "and" and substitute the following:

(x) whether the annuity guarantees the participant the right to surrender a percentage of the surrender value each year, and the percentage, if any; and

(xi) whether the annuity guarantees the interest rate associated with any settlement option; and

(14) In SECTION 15 of the bill, in proposed Subsection (c)(3)(D) of Section 11, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes) (page 19, line 11), strike "qualified investment product" and substitute "eligible qualified product through a salary reduction agreement".

(15) In SECTION 15 of the bill, strike proposed Subsection (d) of Section 11, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes) (page 19, lines 18 through 20), and substitute the following:

(d) A variable annuity must be accompanied by:

(1) a notice that includes any item listed in Subsection (c) of this section that is applicable to variable annuities;

(2) the prospectus; and

(3) any other purchasing information required by law.

(16) In SECTION 26 of the bill, strike "6(h)" (page 29, line 6) and substitute "6(g)".

Floor Amendment No. 3

Amend **CSSB 273**, between SECTIONS 14 and 15 of the bill (house committee printing page 11, between lines 10 and 11), by inserting the following appropriately numbered sections and renumbering subsequent sections of the bill accordingly:

SECTION _____. Section 1, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), as amended by Chapters 1340 and 1341, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

Sec. 1. (a) This section and Section 2 of this Act apply to:

(1) the governing boards [~~Local Boards of Education of the Public Schools of this State, the Governing Boards~~] of [~~the~~] state-supported institutions of higher education;

(2) [~~;~~] the Texas Higher Education Coordinating Board;

(3) [~~;~~] the Texas Education Agency;

(4) [~~;~~] the Texas School for the Deaf;

(5) [~~;~~] the Texas School for the Blind and Visually Impaired;

(6) [~~;~~] the Texas Department of Mental Health and Mental Retardation and the state schools, state hospitals, and other facilities and institutions under its jurisdiction;

(7) [~~;~~] the Texas Department of Health and facilities and institutions under its jurisdiction;

(8) [~~;~~] the Texas Youth Commission and facilities and institutions under its jurisdiction; [~~;~~] and

(9) the governing boards of Centers for Community Mental Health and Mental Retardation Services, county hospitals, city hospitals, city-county hospitals, hospital authorities, hospital districts, affiliated state agencies, and each of their political subdivisions.

(b) An entity described by Subsection (a) of this section [~~of each of them,~~] may enter into agreements with the entity's [~~their~~] employees for the purchase of annuities or for contributions to any type of investment for the entity's [~~their~~] employees as authorized in Section 403(b) of the Internal Revenue Code of 1986 [~~1954~~], and its subsequent amendments [~~as it existed on January 1, 1981~~].

SECTION _____. Section 2, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. (a) If an employee of an [~~a governmental~~] entity covered by Section 1 of this Act is paid by the Comptroller of Public Accounts, the comptroller may take the action, in regard to that employee, that is authorized by Subsection (b) of this section. If an employee of an [~~a governmental~~] entity covered by Section 1 is not paid by the comptroller, the governing board of the [~~governmental~~] entity may take the action in regard to that employee.

(b) The comptroller or the governing board, as appropriate [~~the case may be~~], may:

(1) reduce the salary of participants when authorized by the participants and shall apply the amount of the reduction to the purchase of annuity contracts or to contributions to any type of investment authorized in Section 403(b), [~~of the~~] Internal Revenue Code of 1986 [~~1954~~], and its subsequent amendments [~~as it existed on January 1, 1981~~], the exclusive control of which will vest in the participants; and

(2) develop a system to allow or require participants to electronically authorize:

- (A) participation under this Act;
- (B) purchases of annuity contracts; and
- (C) contributions to investments.

(c) The employee is entitled to designate any agent, broker, or company through which the annuity or investment is to be purchased.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 273**, on third reading, as follows:

(1) In SECTION 15 of the bill (house committee report), in added Subsection (a), Section 5, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), strike "eligible qualified investment product" and substitute "eligible qualified investment".

(2) In SECTION 15 of the bill (house committee report), strike added Section 10, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), and substitute the following:

Sec. 10. (a) A person commits an offense if the person:

(1) sells or offers for sale a qualified investment product that is not an eligible qualified investment and that the person knows will be the subject of a salary reduction agreement;

(2) violates the licensing requirements of Subchapter A, Chapter 21, Insurance Code, with regard to a qualified investment product that the person knows will be the subject of a salary reduction agreement; or

(3) engages in activity described by Section 4, Article 21.21, Insurance Code, with regard to a qualified investment product that the person knows will be the subject of a salary reduction agreement.

(b) An offense under this section is a Class A misdemeanor.

(c) If conduct that constitutes an offense under this section also constitutes a criminal offense under the Insurance Code, the actor may be prosecuted under this section or under the Insurance Code, but not under both this section and the Insurance Code.

(3) Strike the SECTIONS of the bill that amend Articles 21.02-1 and 21.07A, Insurance Code (SECTIONS 19 and 20, house committee report).

(4) In SECTION 27 of the bill (house committee report), which provides the effective dates for various provisions of the bill, in Subsection (b) of that section, strike Subdivisions (2) and (3) and renumber the subsequent subdivisions appropriately.

(5) Renumber the SECTIONS of the bill appropriately.

The amendments were read.

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

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 273** 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 Armbrister, Chair; Cain, Bivins, Fraser, and Staples.

SENATE RESOLUTION 1187

Senator West offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 77th Legislature, Regular Session, 2001, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on Senate Bill No. 1432, relating to truancy, high school equivalency programs, and the authority of justice, municipal, and certain juvenile courts in relation to children and providing criminal penalties, to consider and take action on the following matter:

Senate Rule 12.03(1) is suspended to permit the committee to change text that is not in disagreement by substituting "article" for "section" so that added Articles 45.054(c) and (d), Code of Criminal Procedure, read as follows:

(c) A court having jurisdiction under this article shall endorse on the summons issued to the parent of the individual who is the subject of the hearing an order directing the parent to appear personally at the hearing and directing the person having custody of the individual to bring the individual to the hearing.

(d) An individual commits an offense if the individual is a parent who fails to attend a hearing under this article after receiving notice under Subsection (c) that the individual's attendance is required. An offense under this subsection is a Class C misdemeanor.

Explanation: The changed text is necessary to correct an inadvertent drafting error.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

CONFERENCE COMMITTEE ON HOUSE BILL 1234

Senator Zaffirini 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 1234** 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 1234** 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 Zaffirini, Chair; Moncrief, Whitmire, Staples, and Shapiro.

SENATE BILL 1573 WITH HOUSE AMENDMENTS

Senator Lindsay called **SB 1573** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 1573** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of floating cabins; providing penalties.

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

SECTION 1. Title 4, Parks and Wildlife Code, is amended by adding Chapter 32 to read as follows:

CHAPTER 32. FLOATING CABINS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.001. DEFINITIONS. In this chapter:

(1) "Coastal water" means those waters east and south of the coastal waters boundary established in 31 T.A.C. Section 65.3(10).

(2) "Floating cabin" means a structure securely moored in the coastal water of this state used for habitation or shelter and not routinely used for transportation. The term includes all mooring lines, anchors, anchor lines, spuds, and pilings and any other tethering devices. The term does not include a structure permitted by the General Land Office under Chapter 33, Natural Resources Code.

Sec. 32.002. APPLICABILITY TO COASTAL WATER. This chapter applies only to floating cabins moored in coastal water.

Sec. 32.003. APPLICABILITY OF OTHER LAW. Chapter 33, Natural Resources Code, does not apply to a floating cabin regulated under this chapter.

Sec. 32.004. EXEMPTION. Subchapter B does not apply to a floating cabin owned by a state agency.

Sec. 32.005. RULES. The commission may adopt rules to implement this chapter.

Sec. 32.006. NONAPPLICABILITY OF CHAPTER 2001, GOVERNMENT CODE. The contested case provisions of the Administrative Procedure Act (Sections 2001.051-2001.178, Government Code) do not apply to this chapter.

[Sections 32.007-32.050 reserved for expansion]

SUBCHAPTER B. PERMITS FOR FLOATING CABINS

Sec. 32.051. PERMIT REQUIRED. A person may not own, maintain, or use a floating cabin in the public coastal water of this state unless a permit has been issued under this chapter for the floating cabin.

Sec. 32.052. ELIGIBILITY FOR PERMIT. A person may apply for a floating cabin permit if:

(1) the person owns the floating cabin;

(2) the floating cabin floats at high tide;

(3) the owner owned the floating cabin on June 1, 2001; and

(4) the floating cabin has been moored at the same location from June 1, 2001, until August 31, 2001; provided, however, that as to any floating cabin that is certified as having been on the water and at such location from on or before June 1, 2001, the owner thereof may remove such floating cabin for the making of repairs, provided that such removal does not exceed 60 consecutive days.

Sec. 32.053. APPLICATION FOR PERMIT. (a) An applicant must apply for a permit on a form prescribed by the department. The department shall issue a floating cabin permit to an applicant who:

(1) meets the eligibility requirements of Section 32.052;

(2) provides the name, mailing address, and telephone number of the applicant;

(3) describes the exact location of the floating cabin in terms of longitude, latitude, degrees, minutes, and seconds as determined by the global positioning system;

(4) describes the height, length, and width of the floating cabin;

(5) provides the department with a color photograph with a full view of the floating cabin;

(6) pays a fee of \$2,500 or a lesser amount set by the commission; and

(7) provides the department with any other information that the department reasonably requires.

(b) The applicant and each owner of the floating cabin must sign the application under penalty of perjury.

(c) The department shall remit all fees collected under this section to the comptroller for deposit to the credit of the floating cabins cleanup account in the general revenue fund. Money in the account may be used only for the cleanup of illegal or abandoned floating cabins and related debris in the coastal water.

Sec. 32.054. TERM OF PERMIT. A floating cabin permit issued under this chapter has a term of one year.

Sec. 32.055. ORIGINAL PERMIT AND PERMIT RENEWAL FEE. (a) An original application for permit under Section 32.053 must be accompanied by a permit application fee of \$600 or an amount set by the commission, whichever is higher.

(b) To renew a floating cabin permit, a permit holder must apply in the manner prescribed by commission rule and pay a permit renewal fee of \$600 or an amount set by the commission, whichever is higher.

(c) The department may refuse to issue or transfer an original or renewal license, permit, or tag if the permittee has:

(1) been finally convicted of a violation of Section 32.154;

(2) failed to comply with a notice issued under Section 32.154; or

(3) failed to pay a civil penalty assessed under Section 32.154.

(d) The department shall remit all fees collected under this section to the comptroller for deposit to the credit of the game, fish, and water safety account in the general revenue fund.

Sec. 32.056. LOCATION OF PERMIT; INSPECTION ALLOWED. A permit holder shall keep a copy of the permit in the floating cabin and available for inspection by the department on request.

Sec. 32.057. TRANSFER OF PERMIT. (a) A permit holder may in writing transfer the permit to a new owner of the floating cabin.

(b) Not later than the 60th day after the date of transfer, the new permit holder shall provide to the department:

(1) the name, mailing address, and telephone number of the new permit holder;

(2) any other information the department reasonably requires; and

(3) a \$600 transfer fee.

(c) In the event that the permit holder consists of more than one person, the withdrawal of persons from ownership shall not, on renewal, be considered a transfer to the remaining owner or owners for purpose of payment of the transfer fee.

(d) The new permit holder must sign the information provided to the department under Subsection (b) under penalty of perjury.

Sec. 32.058. PURCHASE PROGRAM; PERMIT EXPIRES. (a) The commission by rule may establish a program to purchase a floating cabin for which a permit has been issued.

(b) On transfer of ownership under this section, the permit issued for the floating cabin expires.

(c) The owner of a floating cabin is not required to sell the cabin to the department under this section.

(d) The floating cabin purchase account is created as a separate account in the general revenue fund. The account consists of money deposited to the account under this section, including interest on that money. The department may accept grants and gifts of money or materials from private or public sources to be applied to the floating cabin purchase account. Money in the floating cabin purchase account may be used only for the purposes of this section. Section 403.095, Government Code, does not apply to the account.

(e) Money from the game, fish, and water safety account may not be used to purchase a floating cabin under this section.

[Sections 32.059-32.100 reserved for expansion]

SUBCHAPTER C. REQUIREMENTS

AND PROHIBITED CONDUCT

Sec. 32.101. IDENTIFICATION OF FLOATING CABIN. (a) A floating cabin must be marked and identified by numbers, reflective tape, paint, or other means as the commission may by rule require.

(b) From sunset to sunrise, a floating cabin shall exhibit at least one white light that is visible from a 360-degree angle.

(c) This section applies to each owner of a floating cabin.

Sec. 32.102. RELOCATION OF FLOATING CABIN. A permit holder may relocate the floating cabin, subject to department approval, and the commission shall by rule specify criteria for allowing relocation.

Sec. 32.103. REPLACEMENT OF FLOATING CABIN. The permit holder may replace the floating cabin if:

(1) the replacement cabin does not exceed the height, length, or width of the original cabin; and

(2) the department approves the replacement.

Sec. 32.104. INCREASE IN SIZE OF CABIN PROHIBITED. A person may not increase the height, length, or width of a floating cabin.

Sec. 32.105. SANITATION DEVICE. (a) A floating cabin shall be equipped with a portable marine sanitation device capable of holding and retaining human body waste.

(b) Each owner of a floating cabin is liable for a violation of this section.

Sec. 32.106. SEWAGE DISCHARGE PROHIBITED. A person may not discharge human body waste, treated or untreated, from a floating cabin into or adjacent to coastal water or state land.

Sec. 32.107. LOCATION OF FLOATING CABIN IN CERTAIN SITES PROHIBITED. (a) A floating cabin may not be located in a state park, state wildlife refuge, state wildlife sanctuary, or state coastal preserve.

(b) Each owner of a floating cabin is liable for a violation of this section.

Sec. 32.108. OTHER PROHIBITED CONDUCT. An owner of a floating cabin may not allow the cabin to:

(1) obstruct navigation;

(2) damage an oyster reef, serpulid reef, or seagrass bed; or

(3) rest on a bottom or shoreline at high tide.

[Sections 32.109-32.150 reserved for expansion]

SUBCHAPTER D. ENFORCEMENT AND PENALTIES

Sec. 32.151. DISCIPLINARY ACTION. The department may suspend or revoke a person's floating cabin permit or place the permit holder on probation for a violation of this chapter.

Sec. 32.152. CIVIL ACTIONS ALLOWED; CIVIL PENALTY. (a) The department may bring an action for damages, injunctive relief, and any other appropriate civil relief for a violation of this chapter, except for Section 32.106.

(b) Each owner of the floating cabin is jointly and severally liable for a violation under this section.

Sec. 32.153. CRIMINAL PENALTIES. (a) A person commits an offense if the person violates:

- (1) Section 32.051;
- (2) Section 32.053(b);
- (3) Section 32.056;
- (4) Section 32.057(d);
- (5) Section 32.101;
- (6) Section 32.104;
- (7) Section 32.105;
- (8) Section 32.106;
- (9) Section 32.107; or
- (10) Section 32.108.

(b) Except as provided by Subsection (c), an offense under Subsection (a) is a Class C Parks and Wildlife Code misdemeanor.

(c) If it is shown on the trial of an offense under this section that the defendant was previously convicted two or more times under this section, the offense is a Class B Parks and Wildlife Code misdemeanor.

(d) Each day of a violation under this section is a separate offense.

Sec. 32.154. REMOVAL OF FLOATING CABIN; CRIMINAL PENALTY; CIVIL PENALTY; HEARING. (a) If a person owns a floating cabin that does not meet the criteria for issuance of an original permit under this chapter or if an owner violates a provision of Section 32.104, 32.107, or 32.108, the department may by written notice require the removal of the floating cabin from the coastal water not later than the 90th day after the date of notice. The owner may, not later than 30 days after receipt of notice of removal, object to the revocation and show good cause why the permit should not be revoked. Good cause includes:

- (1) force majeure, including a hurricane or tropical storm;
- (2) circumstances resulting in a change of criteria for reasons not attributable to the actions of the owner; or
- (3) any other reasons that the department adopts by rule.

(b) A person commits an offense if the person does not remove the floating cabin during the period provided by Subsection (a) or such extended period as may be prescribed by department rule. An offense under this subsection is a Class B Parks and Wildlife Code misdemeanor.

(c) The department may assess a civil penalty for a violation of Subsection (a) of not more than \$1,000 for each day after the notice period that the owner fails to remove the floating cabin. Each owner is jointly and severally liable for the civil penalty and the reasonable costs of removal and cleanup of the floating cabin and related materials at that location.

(d) If a person does not remove the floating cabin during the period provided by Subsection (a), the department or a person or entity authorized by the department may remove and dispose of the floating cabin and any associated personal property in any manner without further notice.

(e) Notice under this section is valid if:

(1) a person who owns a floating cabin has held a permit issued under this chapter and the notice is sent by certified letter from the department to the owner at the last address supplied to the department under this chapter; or

(2) as to a floating cabin that has not been identified and for which the owner has not been issued a permit, the notice is affixed to the floating cabin.

(f) The department is not liable to a person for the value of a floating cabin, or any personal property associated with the cabin, removed under this section.

Sec. 32.155. VENUE. The department may file any suit under this chapter in Travis County or the county in which the floating cabin that is the subject of the suit is located.

SECTION 2. (a) Not later than February 1, 2002, the Parks and Wildlife Commission shall adopt rules necessary to implement Chapter 32, Parks and Wildlife Code, as added by this Act. The Parks and Wildlife Department shall begin to issue the permit required by Section 32.051, Parks and Wildlife Code, not later than March 1, 2002.

(b) The Parks and Wildlife Department may not enforce a prohibition or other requirement imposed by Chapter 32, Parks and Wildlife Code, as added by this Act, before February 1, 2002.

(c) Section 32.153, Parks and Wildlife Code, as added by this Act, applies only to an offense committed on or after February 1, 2002.

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.

Floor Amendment No. 1

Amend **CSSB 1573** as follows:

1. On page 3, line 14, strike "\$2,500" and substitute "\$1500"

2. On page 4, lines 2-3, strike "\$600 or an amount set by the commission, whichever is higher" and substitute "\$300"

3. On page 4, lines 6-7, strike "\$600 or an amount set by the commission, whichever is higher" and substitute "\$300"

4. On page 5, line 3, strike "\$600" and substitute "\$300"

5. On page 8, line 11, insert "Except as to violations of Section 32.101(b)," immediately before the remainder of the Section 32.153(c) such that Section 32.153(c) shall read as follows:

"Except as to violations of Section 32.101(b), if it is shown on the trial of an offense under this section that the defendant was previously convicted two or more times under this section, the offense is a Class B Parks and Wildlife Code misdemeanor."

6. On page 8, strike lines 15-16, which consists of Section 32.153(d) in its entirety.

Floor Amendment No. 2

Amend **CSSB 1573** (House committee printing) as follows:

(1) In Section 1 of the bill, in added Section 32.052(3), Parks and Wildlife Code (page 2, line 18), after "owned", and before "the", insert "and moored".

(2) In Section 1 of the bill, in added Section 32.052(3), Parks and Wildlife Code (page 2, line 18), strike "on June 1" and substitute "before August 31".

(3) In Section 1 of the bill, in added Section 32.052(3), Parks and Wildlife Code (page 2, line 19), strike "and" and substitute a period.

(4) In Section 1 of the bill, strike added Section 32.052(4), Parks and Wildlife Code (page 2, line 20-26).

(5) In Section 1 of the bill, strike added Section 32.053(a)(6), Parks and Wildlife Code (page 3, line 15), after "commission" and before the semicolon, insert "by August 31, 2001".

(6) In Section 1 of the bill, after added Section 32.053, Parks and Wildlife Code (page 3, between lines 24 and 25), insert:

(d) If the permit holder elects to retire the permit, the department shall refund the \$1500 fee on confirmation of proper removal of the floating cabin.

(7) In Section 1 of the bill, in added Section 32.152, Parks and Wildlife Code (page 7, between lines 21 and 22), insert a new subsection (b):

(b) A court shall award the department attorney's fees if the department prevails in a suit filed under this section.

(8) In Section 1 of the bill, in added Section 32.152, Parks and Wildlife Code (page 7, line 22) strike "(b)" and substitute "(c)".

The amendments were read.

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

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1573** 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 Lindsay, Chair; Bernsen, Truan, Jackson, and Brown.

CONFERENCE COMMITTEE ON HOUSE BILL 2255

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 2255** 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 2255** 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; Fraser, Jackson, Lucio, and Bernsen.

SENATE BILL 986 WITH HOUSE AMENDMENT

Senator Duncan called **SB 986** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 986** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to allowing certain tax abatement agreements to provide for the recapture of lost ad valorem tax revenue if a property owner fails to comply with tax abatement agreement requirements regarding job creation or property value.

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

SECTION 1. Subsection (b), Section 312.205, Tax Code, is amended to read as follows:

(b) An agreement made under Section 312.204 or 312.211 may include, at the option of the governing body of the municipality, provisions for:

(1) improvements or repairs by the municipality to streets, sidewalks, and utility services or facilities associated with the property, except that the agreement may not provide for lower charges or rates than are made for other services or properties of a similar character;

(2) an economic feasibility study, including a detailed list of estimated improvement costs, a description of the methods of financing all estimated costs, and the time when related costs or monetary obligations are to be incurred;

(3) a map showing existing uses and conditions of real property in the reinvestment zone;

(4) a map showing proposed improvements and uses in the reinvestment zone; ~~and~~

(5) proposed changes of zoning ordinances, the master plan, the map, building codes, and city ordinances; and

(6) the recapture of all or a portion of property tax revenue lost as a result of the agreement if the owner of the property fails to create all or a portion of the number of new jobs provided by the agreement, if the appraised value of the property subject to the agreement does not attain a value specified in the agreement, or if the owner fails to meet any other performance criteria provided by the agreement, and payment of a penalty or interest, or both, on that recaptured property tax revenue.

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

The amendment was read.

Senator Duncan moved to concur in the House amendment to **SB 986**.

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

Present-not voting: Mr. President.

(President in Chair)

SENATE BILL 1839 WITH HOUSE AMENDMENTS

Senator Moncrief called **SB 1839** 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.

Committee Amendment No. 1

Amend **SB 1839** (senate engrossment) as follows:

(1) Strike Article 9 of the bill (page 37, line 5, through page 42, line 6), and substitute the following:

ARTICLE 9. QUALITY ASSURANCE FEE

SECTION 9.01. Chapter 252, Health and Safety Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. QUALITY ASSURANCE FEE

Sec. 252.201. DEFINITION. In this subchapter, "gross receipts" means money paid as compensation for services provided to residents, including client participation. The term does not include charitable contributions to a facility.

Sec. 252.202. COMPUTING QUALITY ASSURANCE FEE. (a) A quality assurance fee is imposed on each facility for which a license fee must be paid under Section 252.034. The fee:

(1) is an amount established under Subsection (b) multiplied by the number of patient days as determined in accordance with Section 252.203;

(2) is payable monthly; and

(3) is in addition to other fees imposed under this chapter.

(b) The Health and Human Services Commission or the department at the direction of the commission shall set the quality assurance fee for each day in the amount necessary to produce annual revenues equal to an amount that is not more than six percent of the facility's total annual gross receipts in this state. The fee is subject to a prospective adjustment as necessary.

(c) The amount of the quality assurance fee must be determined using patient days and gross receipts reported to the department and covering a period of at least six months.

(d) The quality assurance fee is an allowable cost for reimbursement under the Medicaid program.

Sec. 252.203. PATIENT DAYS. For each calendar day, a facility shall determine the number of patient days by adding the following:

(1) the number of patients occupying a facility bed immediately before midnight of that day;

(2) the number of beds that are on hold on that day and that have been placed on hold for a period not to exceed three consecutive calendar days during which a patient is in a hospital; and

(3) the number of beds that are on hold on that day and that have been placed on hold for a period not to exceed three consecutive calendar days during which a patient is on therapeutic home leave.

Sec. 252.204. REPORTING AND COLLECTION. (a) The Health and Human Services Commission or the department at the direction of the commission shall collect the quality assurance fee.

(b) Each facility shall:

(1) not later than the 10th day after the last day of a month file a report with the Health and Human Services Commission or the department, as appropriate, stating the total patient days for the month; and

(2) not later than the 30th day after the last day of the month pay the quality assurance fee.

Sec. 252.205. RULES; ADMINISTRATIVE PENALTY. (a) The Health and Human Services Commission shall adopt rules for the administration of this subchapter, including rules related to the imposition and collection of the quality assurance fee.

(b) The Health and Human Services Commission may not adopt rules granting any exceptions from the quality assurance fee.

(c) An administrative penalty assessed under this subchapter in accordance with Section 252.065 may not exceed one-half of the amount of the outstanding quality assurance fee or \$20,000, whichever is greater.

Sec. 252.206. QUALITY ASSURANCE FUND. (a) The quality assurance fund is a fund outside the state treasury held by the Texas Treasury Safekeeping Trust Company. Notwithstanding any other law, the comptroller shall deposit fees collected under this subchapter to the credit of the fund.

(b) The quality assurance fund is composed of:

(1) fees deposited to the credit of the fund under this subchapter; and

(2) the earnings of the fund.

(c) Money deposited to the quality assurance fund remains the property of the fund and may be used only for the purposes of this subchapter.

(d) Subject to legislative appropriation and this subchapter, quality assurance fees collected under this subchapter, combined with federal matching funds, will support or maintain an increase in Medicaid reimbursement for facilities.

Sec. 252.207. REIMBURSEMENT OF FACILITIES. (a) The Health and Human Services Commission shall use money in the quality assurance fund, together with any federal money available to match that money, to:

(1) offset allowable expenses under the Medicaid program; or

(2) increase reimbursement rates paid under the Medicaid program to facilities.

(b) The Health and Human Services Commission or the department at the direction of the commission shall devise the formula by which amounts received under this section increase the reimbursement rates paid to facilities under the Medicaid program.

(c) The Health and Human Services Commission shall ensure that the formula devised under Subsection (b) provides incentives for facilities to increase direct care staffing and direct care wages and benefits.

Sec. 252.208. INVALIDITY; FEDERAL FUNDS. If any portion of this subchapter is held invalid by a final order of a court that is not subject to appeal, or if the Health and Human Services Commission determines that the imposition of the fee and the expenditure as prescribed by this subchapter of amounts collected will not entitle the state to receive additional federal funds under the Medicaid program, the commission shall stop collection of the quality assurance fee and shall return, not later than the 30th day after the date collection is stopped, any money collected, but not spent, under this subchapter to the facilities that paid the fees in proportion to the total amount paid by those facilities.

Sec. 252.209. LEGISLATIVE REVIEW; EXPIRATION. The 79th Legislature shall review the operation and effectiveness of this subchapter. Unless continued in effect by the 79th Legislature, this subchapter expires September 1, 2005.

SECTION 9.02. Notwithstanding Section 252.202, Health and Safety Code, as added by this article, the quality assurance fee imposed under Subchapter H, Chapter 252, Health and Safety Code, as added by this article, that is effective for the first month following the effective date of this Act is equal to \$5.25 multiplied by the number of patient days as determined under that subchapter. The quality assurance fee established under this section remains in effect until the Health and Human Services Commission, or the Texas Department of Human Services at the direction of the commission, obtains the information necessary to set the fee under Section 252.202, Health and Safety Code, as added by this article.

SECTION 9.03. As soon as practicable after the effective date of this Act, the Health and Human Services Commission shall adopt rules as necessary to implement Subchapter H, Chapter 252, Health and Safety Code, as added by this article.

SECTION 9.04. If before implementing any provision of this article a state agency determines 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.

(2) In SECTION 11.01 of the bill, in Subdivision (10) (page 44, lines 18 and 19), strike "nursing homes, as described by Subchapter Q, Chapter 242" and substitute "intermediate care facilities for the mentally retarded, as described by Subchapter H, Chapter 252".

Floor Amendment No. 2

Amend Committee Amendment No. 1 to **SB 1839** as follows:

(1) In Section 252.202, Health and Safety Code, as added by SECTION 9.01, in the first sentence of Subsection (a) (house committee printing, page 45, line 14), between "Section 252.034" and the period, insert ", including a facility operated by a local mental health or mental retardation authority".

(2) In Section 252.206, Health and Safety Code, as added by SECTION 9.01, in Subsection (d) (house committee printing, page 47, line 21), between "facilities" and the period, insert "and associated service providers providing services under the state Medicaid home and community-based services waiver program for persons with mental retardation adopted in accordance with 42 U.S.C. Section 1396n(c)".

(3) In Section 252.207, Health and Safety Code, as added by SECTION 9.01, in Subsection (a)(2) (house committee printing, page 47, line 29), between "facilities" and the period, insert "and associated service providers providing services under the state Medicaid home and community-based services waiver program for persons with mental retardation adopted in accordance with 42 U.S.C. Section 1396n(c)".

(4) In Section 252.207, Health and Safety Code, as added by SECTION 9.01, in Subsection (b) (house committee printing, page 48, line 2), between "facilities" and "under", insert "and the associated services providers".

(5) In Section 252.207, Health and Safety Code, as added by SECTION 9.01, in Subsection (c) (house committee printing, page 48, line 5), strike "for facilities".

Floor Amendment No. 3

Amend Committee Amendment No. 1 to **SB 1839** in Section 252.207, Health and Safety Code, as added by SECTION 9.01, following Subsection (c) (house committee printing, page 48, between lines 6 and 7), by inserting new Subsection (d) to read as follows:

(d) The increased Medicaid reimbursement paid to a facility under this section may not be based solely on the amount of the quality assurance fee paid by that facility unless authorized by 42 C.F.R. Section 433.68 or other federal law.

Committee Amendment No. 3

Amend **SB 1839** (senate engrossed version) as follows:

(1) In Section 242.0372, Health and Safety Code, as added by SECTION 6.01 of the bill, in Subsection (c)(1), between "aggregate" and the semicolon (page 21, line 3), insert ", except as provided by Subsection (d)".

(2) In Section 242.0372, Health and Safety Code, as added by SECTION 6.01 of the bill, following Subsection (c) (page 21, between lines 13 and 14), insert new Subsection (d) to read as follows:

(d) For an institution that is owned and operated by a governmental unit, as that term is defined by Section 101.001, Civil Practice and Remedies Code, the insurance coverage maintained by the institution must provide coverage only to the extent of the governmental unit's liability under Section 101.023, Civil Practice and Remedies Code.

(3) In Section 242.0372, Health and Safety Code, as added by SECTION 6.01 of the bill, renumber subsections appropriately.

Floor Amendment No. 7

Amend Committee Amendment No. 3 by J. Davis to **SB 1839** by striking the text of the amendment (house committee printing, page 51, lines 1-17) and substituting the following:

Amend **SB 1839** as follows:

(1) Strike Article 6 of the bill (house committee printing, page 20, line 15, through page 22, line 7), and renumber subsequent ARTICLES and SECTIONS of the bill accordingly.

(2) In SECTION 11.01 of the bill, strike Subdivision (4) (house committee printing, page 44, lines 3-4) and renumber subsequent subdivisions of the SECTION accordingly.

Committee Amendment No. 4

Amend **SB 1839** (senate engrossed version) as follows:

(1) In Section 242.071, Health and Safety Code, as amended by SECTION 8.01 of the bill, strike Subsection (j) (page 34, lines 14-18), and substitute the following:

(j) In this section, "immediate jeopardy to health and safety" means a situation in which immediate corrective action is necessary because the institution's non-compliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the institution.

(2) In Section 252.071, Health and Safety Code, as amended by SECTION 8.02 of the bill, strike Subsection (j) (page 36, lines 21-25), and substitute the following:

(j) In this section, "immediate jeopardy to health and safety" means a situation in which immediate corrective action is necessary because the facility's non-compliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the facility.

Committee Amendment No. 5

Amend **SB 1839** (senate engrossment) as follows:

(1) In SECTION 5.06 of the bill, in the recital (page 10, line 17), strike "Subdivision (1)" and substitute "Subdivisions (1) and (3)".

(2) In SECTION 5.06 of the bill, following amended Subdivision (1), insert the following:

(3) Any deficit sustained by the association with respect to physicians and health care providers, other than for-profit and not-for-profit nursing homes, or by for-profit and not for profit nursing homes in any one year shall be recouped, pursuant to the plan of operation and the rating plan then in effect, by one or more of the following procedures in this sequence:

First, a contribution from the policyholder's stabilization reserve fund for physicians and health care providers, other than for-profit and not-for-profit nursing homes, established under Section 4A of this article or from the policyholder's stabilization reserve fund for for-profit and not-for-profit nursing homes, established under Section 4B of this article, as appropriate, until the respective fund [same] is exhausted;

Second, an assessment upon the policyholders pursuant to Section 5(a) of this article;

Third, an assessment upon the members pursuant to Section 5(b) of this article. To the extent a member has paid one or more assessments and has not received reimbursement from the association in accordance with Subdivision (5) of this subsection, a credit against premium taxes under Article 4.10 of this code [7064, Revised Civil Statutes of Texas, 1925], as amended, shall be allowed. The tax credit shall be allowed at a rate of 20 percent per year for five successive years following the year in which said deficit was sustained and at the option of the insurer may be taken over an additional number of years.

(3) In Section 5.07 of the bill, strike amended Section 4A, Article 21.49-3, Insurance Code (page 11, line 18, through page 13, line 23), and substitute the following:

Sec. 4A. POLICYHOLDER'S STABILIZATION RESERVE FUND FOR PHYSICIANS AND HEALTH CARE PROVIDERS OTHER THAN FOR-PROFIT AND NOT-FOR-PROFIT NURSING HOMES. (a) There is hereby created a policyholder's stabilization reserve fund for physicians and health care providers, other than for-profit and not-for-profit nursing homes, which shall be administered as provided herein and in the plan of operation of the association. The stabilization reserve fund created by this section is separate and distinct from the stabilization reserve fund for for-profit and not-for-profit nursing homes created by Section 4B of this article.

(b) Each policyholder shall pay annually into the stabilization reserve fund a charge, the amount of which shall be established annually by advisory directors chosen by health care providers, other than for-profit and not-for-profit nursing homes, and physicians eligible for insurance in the association in accordance with the plan of

operation. The charge shall be in proportion to each premium payment due for liability insurance through the association. Such charge shall be separately stated in the policy, but shall not constitute a part of premiums or be subject to premium taxation, servicing fees, acquisition costs, or any other such charges.

(c) The ~~[policyholder's]~~ stabilization reserve fund shall be collected and administered by the association and shall be treated as a liability of the association along with and in the same manner as premium and loss reserves. The fund shall be valued annually by the board of directors as of the close of the last preceding year.

(d) Collections of the stabilization reserve fund charge shall continue until such time as the net balance of the stabilization reserve fund is not less than the projected sum of premiums for physicians and health care providers, other than for-profit and not-for-profit nursing homes, to be written in the year following valuation date.

(e) The stabilization reserve fund shall be credited with all stabilization reserve fund charges collected from physicians and health care providers, other than for-profit and not-for-profit nursing homes, [policyholders] and shall be charged with any deficit from the prior year's operation of the association.

(4) In Section 5.08 of the bill, in the recital (page 13, line 25), strike "Section 4B" and substitute "Sections 4B and 4C".

(5) In Section 5.08 of the bill, following the recital (page 13, between lines 25 and 26), insert the following new Section 4B, Article 21.49-3, Insurance Code, and renumber existing Section 4B as 4C:

Sec. 4B. STABILIZATION RESERVE FUND FOR FOR-PROFIT AND NOT-FOR-PROFIT NURSING HOMES. (a) There is hereby created a stabilization reserve fund for for-profit and not-for-profit nursing homes which shall be administered as provided in this section and in the plan of operation of the association. The stabilization reserve fund created by this section is separate and distinct from the policyholder's stabilization reserve fund for the physicians and health care providers, other than for-profit and not-for-profit nursing homes, created by Section 4A of this article.

(b) Each policyholder shall pay annually into the stabilization reserve fund a charge, the amount of which shall be established annually by advisory directors chosen by for-profit and not-for-profit nursing homes eligible for insurance in the association in accordance with the plan of operation. The charge shall be in proportion to each premium payment due for liability insurance through the association. The charge shall be separately stated in the policy, but shall not constitute a part of premiums or be subject to premium taxation, servicing fees, acquisition costs, or any other similar charges.

(c) The stabilization reserve fund shall be collected and administered by the association and shall be treated as a liability of the association along with and in the same manner as premium and loss reserves. The fund shall be valued annually by the board of directors as of the close of the last preceding year.

(d) Collections of the stabilization reserve fund charge shall continue only until such time as the net balance of the stabilization reserve fund is not less than the projected sum of premiums for for-profit and not-for-profit nursing homes to be written in the year following valuation date.

(e) The stabilization reserve fund shall be credited with all stabilization reserve fund charges collected from for-profit and not-for-profit nursing homes and the net earnings on liability insurance policies issued to for-profit and not-for-profit nursing

home, and shall be charged with any deficit sustained by for-profit and not-for-profit nursing homes from the prior year's operation of the association.

(f) The stabilization reserve fund established under this section, and any earnings of the fund, are state funds and shall be held by the comptroller outside the state treasury on behalf of, and with legal title in, the department. No part of the fund, or the earnings of the fund, may inure to the benefit of a member of the association, a policyholder, or any other individual, and the assets of the fund may be used in accordance with the association's plan of operation only to implement this article and for the purposes of the association, including making payment to satisfy, in whole or in part, the liability of the association regarding a claim made on a policy written by the association.

(g) Notwithstanding Sections 11, 12, and 13 of this article, the stabilization reserve fund established under this section may be terminated only by law.

(h) Notwithstanding Section 11 of this article, on termination of the stabilization reserve fund established under this section, all assets of the fund shall be transferred to the general revenue fund to be appropriated for purposes related to ensuring the kinds of liability insurance coverage that may be provided by the association under this article for for-profit and not-for-profit nursing homes.

(6) Following SECTION 5.08 of the bill (page 15, between lines 1 and 2) insert the following new SECTION, appropriately numbered:

SECTION _____. Section 5, Article 21.49-3, Insurance Code, is amended to read as follows:

Sec. 5. PARTICIPATION. (a) Each policyholder within the group of physicians and health care providers, other than for-profit and not-for-profit nursing homes, or within the group of for-profit and not for profit nursing homes shall have contingent liability for a proportionate share of any assessment of policyholders in the applicable group made under the authority of this article. Whenever a deficit, as calculated pursuant to the plan of operation, is sustained with respect to the group of physicians and health care providers, other than for-profit and not-for-profit nursing homes, or the group of for-profit and not for profit nursing homes [~~by the association~~] in any one year, its directors shall levy an assessment only upon those policyholders in the applicable group who held policies in force at any time within the two most recently completed calendar years in which the association was issuing policies preceding the date on which the assessment was levied. The aggregate amount of the assessment shall be equal to that part of the deficit not recouped from the applicable stabilization reserve fund. The maximum aggregate assessment per policyholder in the applicable group shall not exceed the annual premium for the liability policy most recently in effect. Subject to such maximum limitation, each policyholder in the applicable group shall be assessed for that portion of the deficit reflecting the proportion which the earned premium on the policies of such policyholder bears to the total earned premium for all policies of the association in the applicable group in the two most recently completed calendar years.

(b) All insurers which are members of the association shall participate in its writings, expenses, and losses in the proportion that the net direct premiums, as defined herein, of each such member, excluding that portion of premiums attributable to the operation of the association, written during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association. Each insurer's participation in the association shall be determined

annually on the basis of such net direct premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the insurer that may be required by the board. No member shall be obligated in any one year to reimburse the association on account of its proportionate share in the deficits [~~deficit~~] from operations of the association in that year in excess of one percent of its surplus to policyholders and the aggregate amount not so reimbursed shall be reallocated among the remaining members in accordance with the method of determining participation prescribed in this subdivision, after excluding from the computation the total net direct premiums of all members not sharing in such excess deficits [~~deficit~~]. In the event that the deficits [~~deficit~~] from operations allocated to all members of the association in any calendar year shall exceed one percent of their respective surplus to policyholders, the amount of such deficits [~~deficit~~] shall be allocated to each member in accordance with the method of determining participation prescribed in this subdivision.

(7) In SECTION 5.09 of the bill, in added Section 3, Article 21.49-3d, Insurance Code, strike Subsection (a) (page 15, line 22 through page 16, line 2), and substitute the following:

(a) On behalf of the association, the Texas Public Finance Authority shall issue revenue bonds to:

(1) fund the policyholder's stabilization reserve fund for for-profit and not-for-profit nursing homes established under Section 4B, Article 21.49-3 of this code;

(2) pay costs related to issuance of the bonds; and

(3) pay other costs related to the bonds as may be determined by the board.

(8) In SECTION 5.09 of the bill, in added Section 9, Article 21.49-3d, Insurance Code, in Subsection (a) (page 17, line 7), strike "fund" and substitute "association".

(9) Renumber SECTIONS of Article 5 of the bill accordingly.

Floor Amendment No. 10

Amend Committee Amendment No. 5 to **SB 1839** as follows:

(1) In Item (2) of the amendment, in amended Subdivision (3), Subsection (b), Section 4, Article 21.49-3, Insurance Code, in the second paragraph (house committee printing, page 53, lines 16-17), strike "policyholder's stabilization reserve fund for for-profit" and substitute "stabilization reserve fund for for-profit".

(2) In Item (3) of the amendment, in amended Subsection (e), Section 4A, Article 21.49-3, Insurance Code, (house committee printing, page 55, line 19), between "deficit" and "from the prior year's" insert "sustained by physicians and health care providers, other than for-profit and not-for-profit nursing homes,".

(3) In Item (7) of the amendment, in added Subdivision (1), Subsection (a), Section 3, Article 21.49-3d, Insurance Code (house committee printing, page 60, line 11), strike "policyholder's".

Committee Amendment No. 6

Amend **SB 1839** in SECTION 5.09 of the bill as follows:

(1) In added Subsection (b), Section 10, Article 21.49-3d, Insurance Code, strike "Article 5.24" and substitute "Articles 5.12 and 5.24" (senate engrossment, page 18, line 3).

(2) In added Subsection (c), Section 10, Article 21.49-3d, Insurance Code:

(A) Strike "tax rate applicable" and substitute "tax rates applicable" (senate engrossment, page 18, lines 5 and 8).

(B) Strike "liability insurance to" and substitute "liability insurance, including motor vehicle liability insurance, to" (senate engrossment, page 18, lines 6

(C) Strike "Article 5.24" and substitute "Articles 5.12 and 5.24" (senate engrossment, page 18, line 9).

(D) Strike "tax rate is" and substitute "tax rates are" (senate engrossment, page 18, line 9).

(3) In added Subsection (e), Section 10, Article 21.49-3d, Insurance Code, strike "liability insurance" and substitute "liability insurance, including motor vehicle liability insurance," (senate engrossment, page 18, lines 21 and 25, page 19, lines 3 and 6).

Committee Amendment No. 7

Amend **SB 1839** by adding a new appropriately numbered section as follows and renumbering subsequent sections:

SECTION _____. (a) The legislature approves the procedures established through negotiated rulemaking by the Texas Department of Human Services in compliance with Section 32.0213, Human Resources Code, including any amendments to those procedures with an effective date before April 1, 2001.

(b) The legislature ratifies any waiver issued by the commissioner of human services on or after September 1, 1997, and before April 1, 2001, to a nursing facility relating to the number of certified Medicaid beds at the facility, provided that the facility complies with all applicable requirements for licensure and certification.

Floor Amendment No. 15

Amend **SB 1839** (house committee printing) by inserting the following appropriately numbered ARTICLE to the bill and renumbering ARTICLES and SECTIONS of the bill accordingly:

ARTICLE _____. RATES PAID
FOR NURSING HOME SERVICES

SECTION _____.01. Section 32.028, Human Resources Code, is amended by adding Subsection (g) to read as follows:

(g) The Health and Human Services Commission shall ensure that the rules governing the determination of rates paid for nursing home services improve the quality of care by providing incentives for increasing direct care staff and direct care wages and benefits.

Floor Amendment No. 16

Amend Floor Amendment No. 15 by Eiland to **SB 1839** in Section 32.028(g), Human Resources Code, as added by the amendment, between "benefits" and the period, by inserting "and incorporates the use of a quality of care index, a customer satisfaction index, and a resolved complaints index developed by the commission".

Floor Amendment No. 19

Amend **SB 1839** (senate engrossment) as follows:

(1) Following SECTION 7.02 of the bill (page 29, between lines 8 and 9), insert the following new SECTION, appropriately numbered:

SECTION 7._____. Amend Subtitle B, Title 4, Health and Safety Code, by adding Chapter 255 to read as follows:

CHAPTER 255. QUALITY ASSURANCE EARLY WARNING
SYSTEM FOR LONG-TERM CARE FACILITIES;
RAPID RESPONSE TEAMS

Sec. 255.001. DEFINITIONS. In this chapter:

(1) "Department" means the Texas Department of Human Services.
(2) "Long-term care facility" means a nursing institution, an assisted living facility, or an intermediate care facility for the mentally retarded licensed under Chapter 242, 247, or 252, or certified under Chapter 32, Human Resources Code.

(3) "Quality-of-care monitor" means a registered nurse, pharmacist, or nutritionist who:

(A) is employed by the department;

(B) is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of patient care; and

(C) functions independently of other divisions of the department.

Sec. 255.002. EARLY WARNING SYSTEM. The department shall establish an early warning system to detect conditions that could be detrimental to the health, safety, and welfare of residents. The early warning system shall include analysis of financial and quality-of-care indicators that would predict the need for the department to take action.

Sec. 255.003. QUALITY-OF-CARE MONITORS. (a) The department shall establish regional offices with one or more quality-of-care monitors, based on the number of long-term care facilities in the region, to monitor the facilities in the region on a regular, unannounced, aperiodic basis, including nights, evenings, weekends, and holidays.

(b) Priority for monitoring visits shall be given to long-term care facilities with a history of patient care deficiencies.

(c) Quality-of-care monitors may not be deployed by the department as a part of the regional survey team in the conduct of routine, scheduled surveys.

(d) A quality-of-care monitor may not interfere with, impede, or otherwise adversely affect the performance of the duties of a surveyor, inspector, or investigator of the department.

(e) Quality-of-care monitors shall assess:

(1) the overall quality of life in the long-term care facility; and

(2) specific conditions in the facility directly related to patient care.

(f) The quality-of-care monitor shall include in an assessment visit:

(1) observation of the care and services rendered to residents; and

(2) formal and informal interviews with residents, family members, facility staff, resident guests, volunteers, other regulatory staff, and representatives of a human rights advocacy committee.

(g) The identity of a resident or a family member of a resident interviewed by a quality-of-care monitor as provided by Subsection (f)(2) shall remain confidential and may not be disclosed to any person under any other provision of this section.

(h) The findings of a monitoring visit, both positive and negative, shall be provided orally and in writing to the long-term care facility administrator or, in the absence of the facility administrator, to the administrator on duty or the director of nursing.

(i) The quality-of-care monitor may recommend to the long-term care facility administrator procedural and policy changes and staff training to improve the care or quality of life of facility residents.

(j) Conditions observed by the quality-of-care monitor that create an immediate threat to the health or safety of a resident shall be reported immediately to the regional office supervisor for appropriate action and, as appropriate or as required by law, to law enforcement, adult protective services, other divisions of the department, or other responsible agencies.

Sec. 255.004. RAPID RESPONSE TEAMS. (a) The department shall create rapid response teams composed of health care experts that can visit long-term care facilities identified through the department's early warning system.

(b) Rapid response teams may visit long-term care facilities that request the department's assistance. A visit under this subsection may not occur before the 60th day after the date of an exit interview following an annual or follow-up survey or inspection.

(c) The rapid response teams may not be deployed for the purpose of helping a long-term care facility prepare for a regular inspection or survey conducted under Chapter 242, 247, or 252 or in accordance with Chapter 32, Human Resources Code.

(2) In SECTION 7.02 of the bill:

(A) In the recital, strike "531.056, 531.057," and substitute "531.056" (page 23, line 22).

(B) Strike added Section 531.057, Government Code (page 24, lines 24-26, page 25, lines 1-26, page 26, lines 1-26, page 27, lines 1-26, and page 28, line 1).

(3) In SECTION 7.04 of the bill, strike "531.056, 531.057," and substitute "531.056" (page 30, line 19).

(4) Following SECTION 7.04 of the bill, (page 30, between lines 20 and 21) insert the following new SECTION, appropriately numbered:

SECTION 7.____. Not later than January 1, 2002, the Texas Board of Human Services shall adopt any rules necessary to implement Chapter 255, Health and Safety Code, as added by this article.

(5) In SECTION 7.06 of the bill:

(A) Strike "(a)" (page 30, line 25).

(B) Strike Subsection (b) (page 32, lines 2-5).

(6) Renumber SECTIONS of Article 7 of the bill accordingly.

(7) In SECTION 11.01 of the bill, in Subdivision (7) (page 44, lines 11-13), strike "Section 531.057, Government" and substitute "Chapter 255, Health and Safety".

Floor Amendment No. 20

Amend Floor Amendment No. 19 by Naishtat to **SB 1839**, in item (1) of the amendment, in added Chapter 255, Health and Safety Code (page 4, between lines 11 and 12), by inserting:

Sec. 255.005. REPORT. The department shall assess and evaluate the effectiveness of the quality assurance early warning system and shall report its findings annually to the governor, lieutenant governor, and speaker of the house of representatives.

Floor Amendment No. 21

Amend **SB 1839** in SECTION 7.04 of the bill (house committee printing, page 30, line 18), between "services" and "shall adopt", insert ", through negotiated rulemaking in accordance with Chapter 2008, Government Code".

Floor Amendment No. 22

Amend **SB 1839** (house committee printing) in ARTICLE 7 of the bill by inserting a new SECTION, appropriately numbered, to read as follows, and renumbering subsequent SECTIONS of the bill accordingly:

SECTION 7._____. (a) Section 242.0335, Health and Safety Code, as added by S.B. 772, Acts of the 77th Legislature, Regular Session, 2001, is amended by adding Subsection (d) to read as follows:

(d) Subsection (c) applies only to a license holder designated as eligible for and placed on the list maintained under Subsection (a).

(b) This section takes effect only if S.B. 772, as enacted by the 77th Legislature, Regular Session, 2001, becomes law. If S.B. 772 does not become law, this section has no effect.

Floor Amendment No. 23

Amend **SB 1839** (house committee printing) in SECTION 5.09 of the bill as follows:

(1) In added Subsection (a), Section 9, Article 21.49-3d, Insurance Code, strike "maintenance tax surcharge" and substitute "assessment" (page 17, line 6).

(2) Strike added Section 10, Article 21.49-3d, Insurance Code, and substitute the following:

Sec. 10. ASSESSMENT. (a) The commissioner shall impose an assessment against:

(1) each insurer; and

(2) the association.

(b) The assessment shall be set in an amount sufficient to pay all debt service on the bonds. The assessment is set by the commissioner and shall be collected as the commissioner specifies by rule.

(c) It shall be the duty of each insurer to pay the amount of an assessment under Subsection (b) of this section to the association not later than the 30th day after the association gives notice of the assessment.

(d) Assessments may be collected on behalf of the association by the commissioner through suits brought for that purpose. Venue for those suits is in Travis County. Either party to the action may appeal to the appellate court having jurisdiction over the cause, the appeal shall be at once returnable to the appellate court having jurisdiction over the cause, and the action so appealed shall have precedence in the appellate court over all causes of a different character pending before the court. The commissioner is not required to give an appeal bond in any cause arising under this subsection.

(e) An insurer designated as an impaired insurer by the commissioner is exempt from assessment from and after the date of the designation and until the commissioner determines that the insurer is no longer an impaired insurer.

(f) The association and each insurer may pass through the assessment imposed under this section to each of its policyholders. If the association or an insurer passes

through the assessment to its policyholders, the amount passed through to a policyholder must appear on the policyholder's statement.

(g) As a condition of engaging in the business of insurance in this state, an insurer agrees that if the company leaves the market for liability insurance in this state the insurer remains obligated to pay, until the bonds are retired, the insurer's share of the assessment imposed under this section in an amount proportionate to that insurer's share of the market for liability insurance in this state as of the last complete reporting period before the date on which the insurer ceases to engage in that insurance business in this state. The proportion of the assessment imposed on the insurer shall be based on the insurer's gross premiums for liability insurance for the insurer's last reporting period. However, an insurer is not required to pay the proportionate amount in any year in which the amount of the assessment imposed under this section on insurers continuing to write liability insurance in this state is sufficient to service the bond obligation.

(h) One hundred percent of any assessment paid by an insurer under this section shall be allowed to that insurer as a credit against its premium tax under this code. The tax credit referred to in this section shall be allowed at a rate of 10 percent per year for 10 successive years following the date of assessment and, at the option of the insurer, may be taken over an additional number of years. The balance of any tax credit not claimed in a particular year may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements under Article 6.12 of this code.

(i) Available credit against premium tax allowed under Subsection (h) of this section may be transferred or assigned among or between insurers if:

(1) a merger, acquisition, or total assumption of reinsurance among or between the insurers occurs; or

(2) the commissioner by order approves the transfer or assignment.

Floor Amendment No. 1 on Third Reading

Amend **SB 1839** on third reading by amending Committee Amendment No. 1, Second Reading, as amended, to **SB 1839** on third reading as follows:

1) Amend Section 252.202, Health and Safety Code, as added by Committee Amendment No. 1, as amended on Second Reading, by striking the first sentence thereof and substituting the following:

"(a) A quality assurance fee is imposed on each facility for which a license fee must be paid under Section 252.034 and on each ICF/MR facility owned by a community mental health and mental retardation center, as defined in Chapter 534, Subchapter A, Health and Safety Code."

2) Amend Section 252.206(d), Health and Safety Code, as added by Committee Amendment No. 1, as amended on Second Reading, to read as follows:

"(d) Subject to legislative appropriation and this subchapter, quality assurance fees collected under this subchapter, combined with federal matching funds, will support or maintain an increase in Medicaid reimbursement for facilities. Any funds remaining after ICF/MR rates have been established for the biennium shall be transferred by the Health and Human Services Commission to the Home and Community-Based Services and Mental Retardation Local Authority waiver programs for persons with mental retardation adopted in accordance with 42 U.S.C. Section 1396n(c)."

3) Amend subsections (a) and (b) of Section 252.207, Health and Safety Code, as added by Committee Amendment No. 1, as amended on Second Reading, to read as follows:

"(a) The Health and Human Services Commission shall use money in the quality assurance fund, together with any federal money available to match that money, to:

(1) Offset allowable expenses to administer the fee under this chapter under the Medicaid program; or

(2) increase reimbursement rates paid under the Medicaid program to facilities. Any funds remaining after ICF/MR rates have been established for the biennium may be transferred by the Health and Human Services Commission to the Home and Community-Based Services and Mental Retardation Local Authority waiver programs for persons with mental retardation adopted in accordance with 42 U.S.C. Section 1396n(c).

(b) The Health and Human Services Commission or the department at the direction of the commission shall by rule adopt the formula by which amounts received under this section increase the reimbursement rates paid to facilities and Home and Community-Based Services and Mental Retardation Local Authority waiver programs under the Medicaid program."

The amendments were read.

Senator Moncrief 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 1839** 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 Moncrief, Chair; Duncan, Ellis, Carona, and Ogden.

SENATE BILL 1783 WITH HOUSE AMENDMENTS

Senator Sibley called **SB 1783** 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 1783** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to enhanced availability of advanced telecommunications service.

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

SECTION 1. This Act may be cited as the Texas Universal Broadband Access Act of 2001.

SECTION 2. Chapter 55, Utilities Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. DEPLOYMENT OF
ADVANCED SERVICE

Sec. 55.401. POLICY. (a) It is the policy of this state to ensure that all residents of this state have access to an advanced service at prices and terms reasonably comparable to those of an advanced service provided in large exchanges. An advanced service should be reliable, secure, and easy to use and should be robust enough to provide expected levels of service, handle peak loads, be scalable to growing needs and uses, and be flexible in operation.

(b) It is the policy of this state to ensure that all residents of this state have the availability of an advanced service to be electronically connected to each other and to the world. Access to an advanced service statewide and a continuing ability to take advantage of emerging technologies will move this state to the forefront in education, e-commerce, e-government, teleworking, telemedicine, community development, and other new fields and revitalize the economy of this state.

(c) It is the policy of this state to ensure an environment for the deployment of an advanced service that:

(1) is technology-neutral with respect to the advanced service technology that is used;

(2) prefers local control over solutions to address the provisioning of an advanced service to a particular community; and

(3) prefers competition for deployment of an advanced service rather than governmental mandates.

Sec. 55.402. DEFINITIONS. In this subchapter:

(1) "Advanced service" means a service that delivers an information carrying capacity, in either the downstream or upstream direction, with a speed of at least 200 kilobits a second in one direction in the last mile and with a speed of at least 128 kilobits a second in the alternative direction in the last mile.

(2) "Community" means a geographically contiguous and distinct population. A community must be included wholly in one exchange unless all or part of the community is not included in any exchange.

(3) "Company" means a local exchange company that has a certificate of convenience and necessity.

Sec. 55.403. REQUEST FOR ADVANCED SERVICE. (a) A community may submit to a company providing local exchange service to the community a request for the provision of an advanced service. If the community is not a municipality or county, it must be sponsored by a municipality or county in which all or part of the community is located. The request must include:

(1) the boundaries of the community, which may not include an area that is receiving an advanced service from the company or from another provider of an advanced service under a business arrangement with the company; and

(2) the name, address, and telephone number of a person the company must contact under Section 55.404.

(b) A retail request for an advanced service is considered a bona fide retail request if it is a written request for an advanced service that:

(1) is signed by, and includes the addresses and telephone numbers of, at least:

(A) 75 telephone subscribers in the community if the community is located in an exchange that has more than 1,000 access lines; or

(B) a number of subscribers, which may not be less than 25 or more than 75, in a community located in an exchange that has 1,000 or fewer access lines, as determined in accordance with rules adopted by the commission, which rules must require consideration of population density, distance, terrain, and the size of the exchange, except as provided by Subdivision (2); or

(2) complies with rules adopted by the commission relating to requirements for a bona fide retail request from an uncertificated area or from an exchange with fewer than 25 subscribers.

Sec. 55.404. RECEIPT OF REQUEST AND PROVISION OF AN ADVANCED SERVICE. (a) A company that receives, on or after September 1, 2002, a bona fide retail request under Section 55.403 shall, not later than the 30th day after the date the company receives the request, notify in writing the community contact person named in the request as to whether the company intends to:

(1) provide an advanced service;

(2) enter into a business arrangement with another provider of an advanced service, such as a cable company, fixed wireless company, satellite company, electric cooperative corporation, or holder of a certificate of operating authority or service provider certificate of operating authority to provide an advanced service; or

(3) not provide an advanced service.

(b) Except as provided by Subsection (c), if the company notifies the contact person that the company intends to provide an advanced service under Subsection (a)(1) or (2), the company shall provide an advanced service not later than the 150th day after the date the company notifies the contact person of the company's intent.

(c) If the company notifies the contact person that the company cannot provide an advanced service within the period prescribed by Subsection (b), the company may delay providing the service for an additional 30 days. If the company cannot provide an advanced service by the end of that 30-day period because of circumstances beyond the company's control, the company may request that the commission authorize an additional extension. The commission may authorize the additional extension only on a showing of the circumstances that are beyond the company's control.

(d) The company shall ensure that an advanced service provided under Subsection (a)(1) or (2) is provided:

(1) at terms reasonably comparable to the terms for an advanced service provided in the company's exchange in this state with the greatest number of access lines and in which the company offers an advanced service; and

(2) at prices reasonably comparable to the prices for an advanced service provided in the company's exchange in this state with the greatest number of access lines and in which the company offers an advanced service, subject to Subsection (e).

(e) A company may charge a higher price for an advanced service than is charged for an advanced service in the company's exchange in this state with the greatest number of access lines and in which the company offers an advanced service if the higher price is necessary to recover costs relating to population density, distance, or terrain. However, the price may not exceed an amount determined reasonable by the commission, which may not exceed 140 percent of the price charged for an advanced service in the company's exchange in this state with the greatest number of access lines and in which the company offers an advanced service.

(f) A company may require each person who signed the request for service to commit to receiving an advanced service from the company for one year. The

company may offer, but not require, a commitment of more than one year. If the company requires a one-year commitment, a number of subscribers equal to the number of subscribers necessary to satisfy the requirements of a bona fide request must make that commitment.

(g) Not later than the fifth business day after the date the company receives a request to provide an advanced service, the company shall notify the commission of the request and state whether the request is a bona fide retail request that meets the requirements prescribed by Section 55.403. The commission shall publish notice of the receipt of a bona fide retail request in the Texas Register and post a similar notice on the commission's website.

(h) Not later than the fifth business day after the date the company notifies the community contact person of the company's response to the request, the company shall provide a copy of that response to the commission. If the company intends to provide an advanced service, the company shall promptly notify the commission of the date an advanced service is provided.

Sec. 55.405. COMMUNITY OPTIONS IF COMPANY DECLINES TO PROVIDE AN ADVANCED SERVICE. (a) If the company notifies the community contact person under Section 55.404 that the company does not intend to provide an advanced service, and if another provider is not providing or specifically offering an advanced service to the community as determined by the commission, the community or the sponsoring municipality or county may attempt to obtain funding from any applicable source, including any source described by Subsection (b), to:

(1) directly provide an advanced service to the community; or

(2) enter into a business arrangement to receive an advanced service from the company or a cable company, fixed wireless company, satellite company, electric cooperative corporation, holder of a certificate of operating authority or service provider certificate of operating authority, or other provider of an advanced service.

(b) A community or sponsoring municipality or county described by Subsection (a) may attempt to obtain funding from:

(1) a development corporation created under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes);

(2) a grant or loan from the telecommunications infrastructure fund under Subchapter C, Chapter 57;

(3) a program of the Texas Agricultural Finance Authority;

(4) a community development block grant; or

(5) other business incentives the community or sponsoring municipality or county may use or for which the community, municipality, or county is eligible.

(c) Subsection (b) does not affect the authority that a community or sponsoring municipality or county has under other law to obtain funding for any purpose from a source described by Subsection (b).

(d) Notwithstanding any other law, including Sections 54.201 and 54.202, a community or sponsoring municipality or county may support and provide an advanced service under this subchapter.

Sec. 55.406. FACILITY MAPS AND DATABASE; AGENCY COOPERATION AND PLANNING. (a) The commission shall create and maintain a database that is capable of graphic representation of the location and inventory of all public and private sector advanced service facilities.

(b) The commission shall participate in policy dialogue and coordinate, cooperate, and mutually agree on policies with the Telecommunications Infrastructure

Fund Board, the Department of Agriculture, or other state agencies or groups, as the commission considers necessary, regarding the availability of funding or the establishment of priorities to accelerate the deployment of an advanced service to all areas of this state.

(c) The commission shall:

(1) collect and maintain the information necessary to create and maintain the database under Subsection (a); and

(2) submit a biennial report to the legislature on the deployment of advanced services.

(d) The commission shall maintain the confidentiality of any proprietary information obtained under this subchapter, and that information is not subject to disclosure under Chapter 552, Government Code. In addition, the commission may not disclose information in a manner that identifies the entity from which the commission obtained the information.

Sec. 55.407. COMMISSION AUTHORITY. (a) This subchapter establishes the state's uniform policy for the deployment of an advanced service.

(b) This subchapter supersedes any final order of the commission entered under Section 14.101 or 54.054 to the extent that the order may require a company to deploy a specific advanced service:

(1) to end users; or

(2) on receipt of a specific number of bona fide requests.

(c) Notwithstanding any other provision of this title, the commission has all jurisdiction necessary to enforce this subchapter.

SECTION 3. Section 57.042, Utilities Code, is amended to read as follows:

Sec. 57.042. DEFINITIONS. In this subchapter:

(1) "Advanced service" and "community" have the meanings assigned by Section 55.402.

(2) "Ambulatory health care center" means a health care clinic or an association of such a clinic that is:

(A) exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as amended, as an organization described by Section 501(c)(3), as amended; and

(B) funded wholly or partly by a grant under 42 U.S.C. Section 254b, 254c, or 256, as amended.

(3) ~~(2)~~ "Board" means the telecommunications infrastructure fund board.

(4) ~~(3)~~ "Commercial mobile service provider" means a provider of commercial mobile service as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66).

(5) "Community technology center" means a center that provides individuals or organizations with access to computers, technology literacy training, the Internet, technical support, and staff training.

(6) ~~(4)~~ "Fund" means the telecommunications infrastructure fund.

(7) ~~(5)~~ "Institution of higher education" means:

(A) an institution of higher education as defined by Section 61.003, Education Code; or

(B) a private or independent institution of higher education as defined by Section 61.003, Education Code.

(8) ~~(6)~~ "Library" means:

(A) a public library or regional library system as those terms are defined by Section 441.122, Government Code; or
 (B) a library operated by an institution of higher education or a school district.

(9) ~~(7)~~ "Public not-for-profit health care facility" means a rural or regional hospital or other entity such as a rural health clinic that:

(A) is supported by local or regional tax revenue;
 (B) is a certified not-for-profit health corporation, under federal law; or
 (C) is an ambulatory health care center.

(10) ~~(8)~~ "School district" includes an independent school district, a common school district, and a rural high school district.

(11) ~~(9)~~ "Public school" means a public elementary or secondary school, including an open-enrollment charter school, a home-rule school district school, and a school with a campus or campus program charter.

(12) ~~(10)~~ "Taxable telecommunications receipts" means taxable telecommunications receipts reported under Chapter 151, Tax Code.

(13) ~~(11)~~ "Telemedicine":

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

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

SECTION 4. Section 57.046(b), Utilities Code, is amended to read as follows:

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

(1) equipment;

(2) wiring;

(3) material;

(4) program development;

(5) training;

(6) installation costs; ~~and~~

(7) a statewide telecommunications network;

(8) community planning and determination of advanced service requirements;

(9) the development and provisioning of a community technology center with the exclusion of costs associated with building, renting, leasing, or otherwise acquiring a location for the center; and

(10) an advanced service for a community or sponsoring municipality or county as prescribed by Section 55.405(a).

SECTION 5. Sections 57.047(a), (b), and (c), Utilities Code, are amended to read as follows:

(a) The board may award a grant to a project or proposal that:

(1) provides equipment and infrastructure necessary for:

(A) distance learning;

(B) an information sharing program of a library; ~~or~~

(C) telemedicine services;

(D) community technology centers; or

(E) an advanced service for a community or sponsoring municipality or county that will use the grant for a purpose prescribed by Section 55.405(a);

(2) develops and implements the initial or prototypical delivery of a course or other distance learning material;

(3) trains teachers, faculty, librarians, or technicians in the use of distance learning or information sharing materials and equipment;

(4) develops a curriculum or instructional material specially suited for telecommunications delivery;

(5) provides electronic information; or

(6) establishes or carries out an information sharing program.

(b) The board may award a loan to a project or proposal to acquire equipment needed for distance learning, ~~and~~ telemedicine, or community technology center projects. The board may award a loan to a project or proposal submitted by a community or sponsoring municipality or county to acquire equipment needed for an advanced service project under Section 55.405(a).

(c) In awarding a grant or loan under this subchapter, the board shall give priority to a project or proposal that:

(1) represents collaborative efforts ~~[involving more than one school, university, or library]~~;

(2) contributes matching funds from another source;

(3) shows promise of becoming self-sustaining;

(4) helps users of information learn new ways to acquire and use information through telecommunications or an advanced service;

(5) extends specific educational information and knowledge services to a group not previously served, especially a group in a rural or remote area;

(6) results in more efficient or effective learning than through conventional teaching;

(7) improves the effectiveness and efficiency of health care delivery; ~~or~~

(8) takes advantage of distance learning opportunities in a rural or urban school district with a:

(A) disproportionate number of at-risk youths; or

(B) high dropout rate; or

(9) will establish or enhance the provision of an advanced service to rural or low-income communities of this state.

SECTION 6. Subchapter C, Chapter 57, Utilities Code, is amended by adding Section 57.0475 to read as follows:

Sec. 57.0475. COMMUNITY DEVELOPMENT GRANT AND LOAN REQUIREMENTS. (a) The board shall coordinate the board's duties and responsibilities with the commission and any other state or local government entity as necessary to encourage ubiquitous access to an advanced service in all areas of this state.

(b) An entity requesting a grant or loan to establish a community technology center must, at a minimum, include in the request:

(1) a cost estimate; and

(2) a list of efforts to use other public or private resources and the amount of matching funds to be provided by the entity.

(c) A community or sponsoring municipality or county requesting a grant or loan relating to an advanced service project under Section 55.405(a) must, at a minimum, include in the request:

(1) a network design and cost estimate;

(2) a list of efforts to use other public or private resources and the amount of matching funds to be provided by the community or sponsoring municipality or county; and

(3) a list of all public offices and private sector and nonprofit sector customers that could be connected or receive an advanced service under the proposed project.

SECTION 7. Section 57.048, Utilities Code, is amended to read as follows:

Sec. 57.048. ASSESSMENTS AND COLLECTIONS. (a) An annual assessment is imposed on each telecommunications utility and each commercial mobile service provider doing business in this state.

(b) The assessment is imposed at the rate of 0.76 [~~1-25~~] percent of the taxable telecommunications receipts of the telecommunications utility or commercial mobile service provider, subject to this section.

(c) [~~The total amount deposited to the credit of the fund, excluding interest and loan repayments, may not exceed \$1.5 billion. Not later than August 31 of each year, the comptroller shall determine the total amount, excluding interest and loan repayments, that has been deposited to the credit of the fund during that fiscal year and the preceding fiscal years. If the comptroller determines that a total of \$1.2 billion or more, excluding interest and loan repayments, has been deposited to the credit of the fund, the comptroller shall impose the assessment during the next fiscal year at a rate that the comptroller estimates is sufficient to produce the amount necessary to result in the deposit in the fund of a total of not more than \$1.5 billion, excluding interest and loan repayments.~~

[(d) The comptroller may not collect the assessment during a fiscal year if the comptroller determines after the yearly review that the total amount deposited to the credit of the fund during that fiscal year and the preceding fiscal years is \$1.49 billion or more, excluding interest and loan repayments, and it is not possible to impose the assessment during the next fiscal year at a practical rate without collecting more than a total of \$1.5 billion, excluding interest and loan repayments.

[(e)] The comptroller may require a telecommunications utility or commercial mobile service provider to provide any report or information necessary to fulfill the comptroller's duties under this section. Information provided to the comptroller under this section is confidential and exempt from disclosure under Chapter 552, Government Code.

SECTION 8. Section 54.202, Utilities Code, is amended by adding Subsection (c) to read as follows:

(c) This section does not apply to a municipal electric system owned, operated, and controlled by a municipality with a population of not more than 25,000 with respect to the system's provision of an advanced service as defined by Section 55.402.

SECTION 9. Section 55.014(c), Utilities Code, is amended to read as follows:

(c) Notwithstanding any other provision of this title, beginning September 1, 2005 [~~2001~~], a company to which this section applies that provides advanced telecommunications services within the company's urban service areas, shall, on a bona fide retail request for those services, provide in rural areas of this state

served by the company advanced telecommunications services that are reasonably comparable to the advanced services provided in urban areas. The company shall offer the advanced telecommunications services:

(1) at prices, terms, and conditions that are reasonably comparable to the prices, terms, and conditions for similar advanced services provided by the company in urban areas; and

(2) within 15 months after the bona fide request for those advanced services.

SECTION 10. Subchapter E, Chapter 54, Utilities Code, is amended by adding Section 54.2045 to read as follows:

Sec. 54.2045. LIMITATIONS ON PROVISION OF CABLE SERVICE BY MUNICIPALITY. (a) In this section, "cable service" means, jointly or singly, cable video services or access to the Internet that is provided through a cable system. The term does not include any service that is related to an energy service, municipal utility service, or the provision of a general municipal or governmental service. For purposes of this subsection, cable video programming services or access to the Internet provided to the public generally through a cable system, as defined by Section 522(7), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), as amended, are not within the scope of or related to an energy service, municipal utility service, or general municipal or governmental service.

(b) This section applies to a municipality that is otherwise authorized by law to provide cable services and offers or wants to offer those services to the public:

(1) directly, through an entity created by the municipality, or through an electric system that the municipality directly or indirectly owns, operates, and controls; and

(2) in competition with a private provider of those services.

(c) The municipality may provide cable services only in compliance with this section. The municipality must conduct the municipality's activities in providing cable services and in its regulation of competing private providers that offer cable services so as to avoid discriminatory practices that could limit competition and shall specifically ensure nondiscriminatory and reasonably comparable treatment between the municipality's own provision of cable services and that of competing providers with respect to:

(1) all financial and operational requirements imposed by the municipality on providers of cable services;

(2) any requirement that a franchise, license, or other authorization be obtained before cable services may be offered within the municipality as provided by Subsection (d);

(3) compliance with and enforcement of municipal regulations and requirements governing the construction, operation, and maintenance of facilities used in the provision of cable services; and

(4) access to the municipality's or municipal electric system's utility poles and conduits at terms comparable to those provided to other third-party users by the municipality or municipal electric system and rates that would apply if the municipality or municipal electric system were subject to the provision of Section 224, Communications Act of 1934 (47 U.S.C. Section 151 et seq.), as amended, except that, with respect to its municipal electric system, that system may, on a nondiscriminatory basis, deny a provider of cable services access to its poles, ducts, conduits, or rights-of-way if there is insufficient capacity or for reasons of safety, reliability, or generally applicable engineering purposes.

(d) A municipal franchise, license, or other authorization may not impose on the municipality or municipal electric system any requirement that is less burdensome with respect to technical design performance or public, institutional, educational, and governmental access provisions than the requirements imposed on competing private providers.

(e) Tying arrangements and price discrimination, to the extent proscribed by state and federal antitrust law applicable to municipalities and municipal electric systems, are prohibited in conjunction with an offering of cable services by a municipality or municipal electric system.

(f) A municipality or municipal electric system shall include in its charges for cable services an in-lieu-of-fee or other component that is reasonably equivalent to local property taxes, franchise fees, pole attachment fees, and other fees levied by the municipality on providers of cable services that the business unit of the municipality or municipal electric system providing cable services would have to pay if the unit was a private provider.

(g) A municipality may not begin offering cable services directly, through an electric system that the municipality owns, operates, and controls, or otherwise, unless:

(1) a majority of the voters of the municipality voting in an election called and held by the municipality for that purpose approves the provision of that service; or

(2) the governing body of the municipality conducts a public hearing and adopts a resolution declaring its intent to offer the services as provided by Subsection (h).

(h) Before a public hearing on the issue of offering cable services, the municipality shall make information concerning the anticipated offering, including technical, financial, and business aspects, available to the public. The municipality shall provide notice of the public hearing and of the location of the public information by sending the notice by regular mail to incumbent cable operators and by publishing the notice once in a newspaper of general circulation in the county in which the municipality or municipal electric system is located not earlier than the 30th day or later than the 10th day before the date of the hearing. The governing body shall consider the public comments received at the hearing and may modify the resolution. The municipality may adopt the resolution at a regular or special meeting. The municipality may not adopt the resolution before the 30th day after the date of the public hearing.

(i) In the event of a dispute between a municipality and a provider of cable services under this section, the parties shall explore and attempt to implement available procedures for alternative dispute resolution listed in Section 154.021(a), Civil Practice and Remedies Code, before instituting litigation. This subsection may not be interpreted to require the parties to engage in binding arbitration.

(j) The commission may not adopt any rule related to this section.

SECTION 11. Section 58.253(a), Utilities Code, is amended to read as follows:

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

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

(5) a project funded by the telecommunications infrastructure fund under Subchapter C, Chapter 57, except for a project authorized or permitted by Subchapter L, Chapter 55; or

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

SECTION 12. Subchapter D, Chapter 59, Utilities Code, is amended by adding Section 59.083 to read as follows:

Sec. 59.083. INCENTIVE TO PROVIDE AN ADVANCED SERVICE. (a) In this section, "advanced service" has the meaning assigned by Section 55.402.

(b) As an incentive to deploy an advanced service in this state, a company electing under this chapter may, on notification to the commission and without having to elect under Chapter 58, elect to have the company's services established as:

(1) basic network services according to Section 58.051;

(2) nonbasic services according to Section 58.151; and

(3) new services according to Section 58.153.

(c) The rate cap provision of Section 58.054 and the pricing provisions of Section 58.152 applicable to basic network services and nonbasic services apply to a company electing under this section.

(d) An election made under this section supersedes any final order of the commission entered under Section 14.101 or 54.054 to the extent that the order limits the rates charged for nonbasic services specific to the electing company.

(e) A company may elect under this section only if the company commits to provide an advanced service beginning on September 1, 2001, to any community that submits a bona fide request under Section 55.403 signed by at least 75 subscribers.

SECTION 13. Section 2(11)(A), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(A) "Project" shall mean the land, buildings, equipment, facilities, targeted infrastructure, and improvements (one or more) to promote new and expanded business development or found by the board of directors to be required or suitable for the promotion of development and expansion of manufacturing and industrial facilities, job creation and retention, job training, educational facilities, transportation facilities (including but not limited to airports, ports, mass commuting facilities, and parking facilities), facilities or infrastructure used to support or provide an advanced service, as defined by Section 55.402, Utilities Code, sewage or solid waste disposal facilities, recycling facilities, air or water pollution control facilities, facilities for the furnishing of water to the general public, distribution centers, small warehouse facilities capable of serving as decentralized storage and distribution centers, and facilities for use by institutions of higher education, and for the promotion of development or redevelopment and expansion, including costs of administration and operation, of a military base closed or realigned pursuant to recommendation of the Defense Closure and Realignment Commission pursuant to the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687 note) as amended, and of facilities which are related to any of the foregoing, and in furtherance of the public purposes of this Act, all as defined in the rules of the department, irrespective of whether in existence or required to be identified, acquired, or constructed thereafter.

"Project" also includes job training required or suitable for the promotion of development and expansion of business enterprises and other enterprises described by this Act, as provided by Section 38 of this Act.

SECTION 14. With the exception of Section 54.2045, Utilities Code, as added by this Act, a provision of this Act may not be construed to limit or restrict the provision of a service by a municipality or a municipal electric system that the municipality or system could lawfully provide before the effective date of this Act. Nothing in this Act is intended to expand or change the definition of a public utility under the Utilities Code.

SECTION 15. (a) This Act takes effect September 1, 2001.

(b) The Public Utility Commission of Texas shall submit the first report required by Section 55.406(c)(2), Utilities Code, as added by this Act, not later than January 15, 2003.

Floor Amendment No. 1

Amend **CSSB 1783** in Section 59.083(c), Utilities Code, as added by SECTION 12 of the bill (House Committee Printing, page 22, line 6), by striking "The rate cap provision of Section 58.054" and substituting "The rate cap provisions of Sections 58.054 and 58.302".

Floor Amendment No. 2

Amend **CSSB 1783** by inserting the following new SECTION to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION _____. (a) Section 151.007, Tax Code, is amended by adding Subsection (f) to read as follows:

(f) The sales price of telecommunications services does not include the telecommunications infrastructure fund assessment imposed under Subchapter C, Chapter 57, Utilities Code, if the assessment is passed through to the purchaser of the service.

(b) This section takes effect September 1, 2003.

(c) The change in law made by this section does not affect taxes imposed before the effective date of this section, and the law in effect before that date is continued in effect for purposes of the liability for and collection of those taxes.

Floor Amendment No. 3

Amend **CSSB 1783**, House Committee Report, between SECTIONS 12 and 13 of the bill (page 22, between lines 17 and 18), by inserting the following new SECTION and by renumbering subsequent SECTIONS of the bill accordingly:

SECTION 13. Section 8.053, Education Code, is amended to read as follows:

Sec. 8.053. ADDITIONAL SERVICES. (a) In addition to the services provided under Section 8.051 and the initiatives implemented under Section 8.052, a regional education service center may:

(1) offer any service requested and purchased by any school district or campus in the state; and

(2) contract with a public or private entity for services under this subchapter, including the provision of continuing education courses and programs for educators.

(b) A regional education service center that provides home Internet service to public school students, teachers, or other school personnel shall adopt:

(1) appropriate methods to verify that each subscriber to the Internet service is a public school student, a public school teacher, or another public school employee; and

(2) rules to ensure that the Internet service provides a mechanism to block or filter Internet access to websites containing obscene materials.

(c) A regional education service center that provides home Internet service to public school students, teachers, or other school personnel and that fails to comply with Subsection (b) is not eligible for a grant or loan under Subchapter C, Chapter 57, Utilities Code.

Floor Amendment No. 8

Amend **CSSB 1783** as follows:

(1) In Subchapter L, Chapter 55, Utilities Code, as added by SECTION 2 of the bill (House Committee Printing, page 7, between lines 23 and 24), insert a new Section 55.4055 to read as follows:

Sec. 55.4055. SUPPORT FOR ADVANCED SERVICES IN CERTAIN COMMUNITIES. (a) This section applies only to a community located wholly in:

- (1) a federally designated urban enterprise community;
- (2) an urban enhanced enterprise community; or
- (3) an economically distressed area (colonia).

(b) A local school district, municipality, or county in which a community described by Subsection (a) is located, a public library or public or private institution of higher education in the community, or a local nonprofit organization that is qualified to sponsor a program to promote the receipt and use of advanced services by community residents may, in the same manner provided for other communities by Sections 55.403, 55.404, and 55.405 and through an entity otherwise eligible to receive a grant or loan from the telecommunications infrastructure fund under Subchapter C, Chapter 57, apply for a grant or loan under that subchapter to enter into a business arrangement for the community to receive an advanced service from a cable company, fixed wireless company, satellite company, electric cooperative corporation, holder of a certificate of operating authority, service provider certificate of operating authority, or certificate of convenience and necessity, or other provider of an advanced service.

(2) In Section 57.046(b)(9), Utilities Code, as added by SECTION 4 of the bill (House Committee Printing, page 12, line 5), strike "; and" and substitute "1".

(3) In Section 57.046(b)(10), Utilities Code, as added by SECTION 4 of the bill (House Committee Printing, page 12, line 7), strike the period and substitute the following:
: and

(11) an advanced service for a community described by Section 55.4055(a).

(4) In Section 57.047(a), Utilities Code, as amended by SECTION 5 of the bill (House Committee Printing, page 12, lines 18-21), strike added Paragraphs (D) and (E) and substitute the following:

(D) community technology centers;

(E) electronic textbooks, Internet-based educational materials, and related training for parents and teachers if provided in connection with an alternative education program for children who are in the juvenile justice system;

(F) programs to promote the use of an advanced service in accordance with Section 55.4055 for a community described by Section 55.4055(a); or

(G) an advanced service for a community or sponsoring municipality or county that will use the grant for a purpose prescribed by Section 55.405(a);

(5) Strike Section 57.047(b), Utilities Code, as amended by SECTION 5 of the bill (House Committee Printing, page 13, lines 6-11), and substitute the following:

(b) The board may award a loan to a project or proposal to acquire equipment needed for distance learning, the use of electronic textbooks, Internet-based educational materials, and related training for parents and teachers if provided in connection with an alternative education program for children in the juvenile justice system, [and] telemedicine, or community technology center projects. The board may award a loan to a project or proposal that promotes the receipt and use of an advanced service in accordance with Section 55.4055 for a community described by Section 55.4055(a). The board may award a loan to a project or proposal submitted by a community or sponsoring municipality or county to acquire equipment needed for an advanced service project under Section 55.405(a).

(6) In Section 57.047(c)(8)(B), Utilities Code, as amended by SECTION 5 of the bill (House Committee Printing, page 14, line 5), strike "; or" and substitute "and".

(7) In Section 57.047(c)(9), Utilities Code, as added by SECTION 5 of the bill (House Committee Printing, page 14, line 7), strike the period and substitute the following:

: or

(10) will promote the receipt and use of an advanced service in accordance with Section 55.4055 for a community described by Section 55.4055(a).

(8) Insert the following appropriately numbered SECTIONS to the bill to read as follows and renumber subsequent SECTIONS accordingly:

SECTION _____. Section 51.002, Utilities Code, is amended by adding Subdivision (13) to read as follows:

(13) "Economically distressed area (colonia)" means an area that meets the requirements of Section 17.921, Water Code, and that is located within 100 kilometers (62 miles) of an international border.

SECTION _____. Section 57.045(b), Utilities Code, is amended to read as follows:

(b) The board shall prepare an annual report that:

(1) details the revenues deposited to the credit of the fund, including each account; [and]

(2) summarizes the grants and loans made from each account; and

(3) summarizes the amount of grants and loans made to communities described by Section 55.4055(a).

Floor Amendment No. 9

Amend Floor Amendment No. 8 to **CSSB 1783** to read as follows:

Amend **CSSB 1783** as follows:

(1) In Subchapter L, Chapter 55, Utilities Code, as added by SECTION 2 of the bill (House Committee Printing, page 7, between lines 23 and 24), insert a new Section 55.4055 to read as follows:

Sec. 55.4055. SUPPORT FOR ADVANCED SERVICES IN CERTAIN COMMUNITIES. (a) This section applies only to a community located wholly or partly in a:

(1) federally designated urban enterprise community;

(2) urban enhanced enterprise community; or

(3) economically distressed area (colonia).

(b) Notwithstanding Section 55.403, a local elected official of a community described by this section may submit to a provider of advanced services a request for provision of an advanced service to not less than 25 residents of the community who are not receiving an advanced service at the time of the request. The request must include:

(1) the boundaries of the community;

(2) whether any area of the community is receiving an advanced service from the provider or from another provider of an advanced service; and

(3) the name, address, and telephone number of a community contact person.

(c) If the provider notifies the community contact person that the provider does not intend to provide an advanced service to at least the 25 residents of the community who are not receiving an advanced service at the time of the request, and if another provider of advanced service is not providing or specifically offering, as determined by the commission, an advanced service to the residents of the community who are not receiving an advanced service, then a local school district or public library in the community or a local organization that is exempt from taxation under Section 501(a), Internal Revenue Code of 1986 by being listed under Section 501(c)(3), Internal Revenue Code of 1986 that sponsors a program to promote the receipt and use of advanced services by community residents may apply for a loan or grant under Subchapter C, Chapter 57 to enter into a business arrangement for residents of that community to receive an advanced service from a cable company, fixed wireless company, satellite company, electric cooperative corporation, holder of a certificate of operating authority, service provider of operating authority, or certificate of convenience and necessity or other provider of an advanced service.

(d) A local school district or public library in the community or a local organization that is exempt from taxation under Section 501(a), Internal Revenue Code of 1986 by being listed under Section 501(c)(3), Internal Revenue Code of 1986 that sponsors a program to promote the receipt and use of advanced services by community residents may apply for a grant or loan under Subchapter C, Chapter 57, to provide support to such residents for reasonable installation costs associated with the installation of an advanced service from a cable company, fixed wireless company, satellite company, electric cooperative corporation, holder of a certificate of operating authority, service provider of operating authority, or certificate of convenience and necessity, or other provider of an advanced service.

(e) Money from a grant or loan received under Subsections (c) or (d) may not be used to pay for recurring expenses for a resident of the community to receive an advanced service.

(2) In Section 57.046(b)(9), Utilities Code, as added by SECTION 4 of the bill (House Committee Printing, page 12, line 5), strike "; and" and substitute ";

(3) In Section 57.046(b)(10), Utilities Code, as added by SECTION 4 of the bill (House Committee Printing, page 12, line 7), strike the period and substitute the following:

; and

(11) an advanced service for residents of a community described by Section 55.4055(a).

(4) In Section 57.047(a), Utilities Code, as amended by SECTION 5 of the bill (House Committee Printing, page 12, lines 18-21), strike added Paragraphs (D) and (E) and substitute the following:

(D) community technology centers;

(E) electronic textbooks, Internet-based educational materials, and related training for parents and teachers;

(F) programs to promote the use of advanced services by residents of a community described by Section 55.4055(a); or

(G) an advanced service for a community or sponsoring municipality or county that will use the grant for a purpose prescribed by Section 55.405(a);

(5) Strike Section 57.047(b), Utilities Code, as amended by SECTION 5 of the bill (House Committee Printing, page 13, lines 6-11), and substitute the following:

(b) The board may award a loan to a project or proposal to acquire equipment needed for distance learning, the use of electronic textbooks, Internet-based educational materials, and related training for parents and teachers, [and] telemedicine, or community technology center projects. The board may award a loan to a project or proposal that promotes the receipt and use of advanced services by residents of a community described by Section 55.4055. The board may award a loan to a project or proposal submitted by a community or sponsoring municipality or county to acquire equipment needed for an advanced service project under Section 55.405(a).

(6) In Section 57.047(c)(8)(B), Utilities Code, as amended by SECTION 5 of the bill (House Committee Printing, page 14, line 5), strike "or" and substitute "and".

(7) In Section 57.047(c)(9), Utilities Code, as added by SECTION 5 of the bill (House Committee Printing, page 14, line 7), strike the period and substitute the following:

: or

(10) will promote the receipt and use of advanced services by residents of certain enterprise communities or economically distressed areas (colonias).

(8) Insert the following appropriately numbered SECTIONS to the bill to read as follows and renumber subsequent SECTIONS accordingly:

SECTION _____. Section 51.002, Utilities Code, is amended by adding Subdivision (13) to read as follows:

(13) "Economically distressed area (colonia)" means an area that meets the requirements of Section 17.921, Water Code, and that is located within 100 kilometers (62 miles) of an international border.

SECTION _____. Section 57.045(b), Utilities Code, is amended to read as follows:

(b) The board shall prepare an annual report that:

(1) details the revenues deposited to the credit of the fund, including each account; [and]

(2) summarizes the grants and loans made from each account; and

(3) summarizes the amount of grants and loans made to communities described by Section 55.4055(a).

Floor Amendment No. 10

Substitute the following for Floor Amendment No. 9 to Floor Amendment No. 8 to **CSSB 1783**:

Amend Floor Amendment No. 8 to **CSSB 1783** to read as follows:

Amend **CSSB 1783** as follows:

(1) In Subchapter L, Chapter 55, Utilities Code, as added by SECTION 2 of the bill (House Committee Printing, page 7, between lines 23 and 24), insert a new Section 55.4055 to read as follows:

Sec. 55.4055. SUPPORT FOR ADVANCED SERVICES IN CERTAIN COMMUNITIES.

(a) This section applies only to a community located wholly or partly in a:

- (1) federally designated urban enterprise community;
- (2) state designated enterprise zone;
- (3) urban enhanced enterprise community; or
- (4) economically distressed area along the Texas Mexico border, including

a colonia.

(b) Notwithstanding Section 55.403, a local elected official of a community described by this section may submit to a provider of advanced services a request for provision of an advanced service to not less than 25 residents of the community who are not receiving an advanced service at the time of the request. The request must include:

- (1) the boundaries of the community;
- (2) whether any area of the community is receiving an advanced service from the provider or from another provider of an advanced service; and
- (3) the name, address, and telephone number of a community contact person.

(c) If the provider notifies the community contact person that the provider does not intend to provide an advanced service to at least the 25 residents of the community who are not receiving an advanced service at the time of the request, and if another provider of advanced service is not providing or specifically offering, as determined by the commission, an advanced service to the residents of the community who are not receiving an advanced service, then a local school district or public library in the community or a local organization that is exempt from taxation under Section 501(a), Internal Revenue Code of 1986 by being listed under Section 501(c)(3), Internal Revenue Code of 1986 that sponsors a program to promote the receipt and use of advanced services by community residents may apply for a loan or grant under Subchapter C, Chapter 57 to enter into a business arrangement for residents of that community to receive an advanced service from a cable company, fixed wireless company, satellite company, electric cooperative corporation, holder of a certificate of operating authority, service provider of operating authority, or certificate of convenience and necessity or other provider of an advanced service.

(d) A local school district or public library in the community or a local organization that is exempt from taxation under Section 501(a), Internal Revenue Code of 1986 by being listed under Section 501(c)(3), Internal Revenue Code of 1986 that sponsors a program to promote the receipt and use of advanced services by community residents may apply for a grant or loan under Subchapter C, Chapter 57, to provide support to such residents for reasonable installation costs associated with the installation of an advanced service from a cable company, fixed wireless company, satellite company, electric cooperative corporation, holder of a certificate of operating authority, service provider of operating authority, or certificate of convenience and necessity, or other provider of an advanced service.

(e) Money from a grant or loan received under Subsections (c) or (d) may not be used to pay for recurring expenses for a resident of the community to receive an advanced service.

(2) In Section 57.046(b)(9), Utilities Code, as added by SECTION 4 of the bill (House Committee Printing, page 12, line 5), strike "; and" and substitute ";".

(3) In Section 57.046(b)(10), Utilities Code, as added by SECTION 4 of the bill (House Committee Printing, page 12, line 7), strike the period and substitute the following:

; and

(11) an advanced service for residents of a community described by Section 55.4055(a).

(4) In Section 57.047(a), Utilities Code, as amended by SECTION 5 of the bill (House Committee Printing, page 12, lines 18-21), strike added Paragraphs (D) and (E) and substitute the following:

(D) community technology centers;

(E) electronic textbooks, Internet-based educational materials, and related training for parents and teachers;

(F) programs to promote the use of advanced services by residents of a community described by Section 55.4055(a); or

(G) an advanced service for a community or sponsoring municipality or county that will use the grant for a purpose prescribed by Section 55.405(a);

(5) Strike Section 57.047(b), Utilities Code, as amended by SECTION 5 of the bill (House Committee Printing, page 13, lines 6-11), and substitute the following:

(b) The board may award a loan to a project or proposal to acquire equipment needed for distance learning, the use of electronic textbooks, Internet-based educational materials, and related training for parents and teachers, [and] telemedicine, or community technology center projects. The board may award a loan to a project or proposal that promotes the receipt and use of advanced services by residents of a community described by Section 55.4055. The board may award a loan to a project or proposal submitted by a community or sponsoring municipality or county to acquire equipment needed for an advanced service project under Section 55.405(a).

(6) In Section 57.047(c)(8)(B), Utilities Code, as amended by SECTION 5 of the bill (House Committee Printing, page 14, line 5), strike "; or" and substitute ";".

(7) In Section 57.047(c)(9), Utilities Code, as added by SECTION 5 of the bill (House Committee Printing, page 14, line 7), strike the period and substitute the following:

; or

(10) will promote the receipt and use of advanced services by residents of certain enterprise communities or economically distressed areas (colonias).

(8) Insert the following appropriately numbered SECTIONS to the bill to read as follows and renumber subsequent SECTIONS accordingly:

SECTION _____. Section 51.002, Utilities Code, is amended by adding Subdivision (13) to read as follows:

(13) "Economically distressed area (colonia)" means an area that meets the requirements of Section 17.921, Water Code, and that is located within 100 kilometers (62 miles) of an international border.

SECTION _____. Section 57.045(b), Utilities Code, is amended to read as follows:

(b) The board shall prepare an annual report that:

(1) details the revenues deposited to the credit of the fund, including each account; [and]

(2) summarizes the grants and loans made from each account; and

(3) summarizes the amount of grants and loans made to communities described by Section 55.4055(a).

Floor Amendment No. 11

Amend **CSSB 1783** by adding the following section:

SECTION _____. Subchapter C, Chapter 57, Utilities Code, is amended by adding Section 57.0465 to read as follows:

Sec. 57.0465. PROGRAM TO CONNECT CERTAIN PUBLIC SCHOOL CAMPUSES. (a) The board shall develop and implement a program to award grants and loans to connect to the Internet public school campuses that are not connected to the Internet.

(b) In awarding a grant or loan under this section, the board shall give priority to public school campuses that have a high percentage of at-risk and economically disadvantaged students.

Floor Amendment No. 12

Amend **CSSB 1783** by adding a new Section ____ to read as follows and renumbering the subsequent sections appropriately:

SECTION _____. Subchapter D, Chapter 35, Business & Commerce Code, is amended by adding Section 35.56 to read as follows:

Sec. 35.56. ADVERTISEMENT OF PRICE INFORMATION FOR ADVANCED SERVICES OR TELECOMMUNICATIONS SERVICES. (a) This section applies to a person who offers to sell or provide to another person in this state advanced services or telecommunications services.

(b) A person described by Subsection (a) may not display or publish, or cause to be displayed or published, a written advertisement that contains pricing information regarding the service and equipment unless the information is printed in at least eight-point type.

(c) A person who violates this section is liable to the state for a civil penalty in an amount not to exceed \$1,000 for each violation and for each day of a continuing violation. The attorney general or the prosecuting attorney in the county in which the violation occurs may bring suit to recover the civil penalty imposed under this section.

(d) The attorney general may bring an action in the name of the state to restrain or enjoin a person from violating this section.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 1783** on third reading (in the language added by second reading Amendment No. 8 by Wolens, as amended by Amendment No. 10, the Chavez substitute to Amendment No. 9 by Dutton) in Section 55.4055(a), Utilities Code, as added by item (1), by striking "located wholly or partly" and substituting "located wholly".

Floor Amendment No. 2 on Third Reading

Amend **CSSB 1783**, on third reading, by adding the following SECTION, appropriately numbered, and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 57.047, Utilities Code, is amended by adding Subsection (g) to read as follows:

(g) A grant or loan awarded under this section for a project or proposal that represents a collaborative effort involving more than one public school may be disbursed through a regional education service center at the request of a participating public school.

The amendments were read.

Senator Sibley 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 1783** 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 Sibley, Chair; Van de Putte, Lucio, Jackson, and Fraser.

MOTION TO ADJOURN

On motion of Senator Truan, the Senate at 4:40 p.m. agreed to adjourn, in memory of Charles Alan Wright, upon receipt of Messages from the House, until 10:00 a.m. tomorrow.

MESSAGES FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 24, 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 CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 66 (non-record vote)

HB 71 (non-record vote)

HB 116 (non-record vote)

HB 171 (non-record vote)

HB 176 (137 Ayes, 0 Nays, 1 Present Not Voting)

HB 196 (non-record vote)

HB 217 (non-record vote)

HB 223 (non-record vote)

HB 247 (139 Ayes, 0 Nays, 1 Present Not Voting)

HB 299 (140 Ayes, 0 Nays, 1 Present Not Voting)

HB 310 (non-record vote)
HB 342 (non-record vote)
HB 396 (non-record vote)
HB 400 (non-record vote)
HB 460 (non-record vote)
HB 472 (132 Ayes, 0 Nays, 2 Present Not Voting)
HB 598 (non-record vote)
HB 623 (136 Ayes, 0 Nays, 2 Present Not Voting)
HB 631 (non-record vote)
HB 653 (non-record vote)
HB 678 (non-record vote)
HB 706 (non-record vote)
HB 785 (non-record vote)
HB 820 (non-record vote)
HB 821 (133 Ayes, 0 Nays, 2 Present Not Voting)
HB 824 (non-record vote)
HB 834 (non-record vote)
HB 835 (133 Ayes, 0 Nays, 2 Present Not Voting)
HB 877 (129 Ayes, 0 Nays, 2 Present Not Voting)
HB 936 (non-record vote)
HB 1001 (non-record vote)
HB 1004 (non-record vote)
HB 1006 (non-record vote)
HB 1018 (134 Ayes, 0 Nays, 2 Present Not Voting)
HB 1022 (non-record vote)
HB 1023 (non-record vote)
HB 1024 (136 Ayes, 0 Nays, 3 Present Not Voting)
HB 1050 (non-record vote)
HB 1096 (130 Ayes, 0 Nays, 2 Present Not Voting)
HB 1107 (non-record vote)

THE HOUSE HAS REFUSED TO CONCUR IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

HB 393

House Conferees: Maxey - Chair/Corte/Gray/Kitchen/Longoria

HB 588

House Conferees: Garcia - Chair/Allen/Dutton/Hinojosa/Solis, Jim

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

HB 1117 (non-record vote)
HB 1118 (non-record vote)
HB 1121 (non-record vote)
HB 1127 (non-record vote)
HB 1138 (non-record vote)
HB 1144 (non-record vote)

HB 1161 (125 Ayes, 0 Nays, 2 Present Not Voting)
HB 1183 (non-record vote)
HB 1188 (129 Ayes, 0 Nays, 2 Present Not Voting)
HB 1200 (non-record vote)
HB 1214 (132 Ayes, 0 Nays, 2 Present Not Voting)
HB 1241 (non-record vote)
HB 1243 (non-record vote)
HB 1258 (non-record vote)
HB 1285 (136 Ayes, 0 Nays, 2 Present Not Voting)
HB 1287 (non-record vote)
HB 1333 (134 Ayes, 0 Nays, 2 Present Not Voting)
HB 1359 (136 Ayes, 0 Nays, 2 Present Not Voting)
HB 1365 (non-record vote)
HB 1403 (130 Ayes, 2 Nays, 2 Present Not Voting)
HB 1408 (non-record vote)
HB 1418 (non-record vote)

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 289, Honoring Marshall Herklotz of Huntsville on his retirement from the Texas Department of Criminal Justice.

HCR 309, Instructing the enrolling clerk of the house to make technical corrections in H.B. 1772.

HCR 314, Instructing the enrolling clerk of the house to make technical corrections to House Bill No. 2744.

HCR 315, Instructing the enrolling clerk of the house to make a technical correction to House Bill No. 2040.

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

HB 1445 (non-record vote)
HB 1562 (non-record vote)
HB 1572 (non-record vote)
HB 1645 (135 Ayes, 0 Nays, 1 Present Not Voting)
HB 1659 (132 Ayes, 0 Nays, 1 Present Not Voting)
HB 1685 (135 Ayes, 0 Nays, 1 Present Not Voting)
HB 1691 (non-record vote)
HB 1692 (132 Ayes, 0 Nays, 1 Present Not Voting)
HB 1697 (131 Ayes, 0 Nays, 1 Present Not Voting)
HB 1712 (non-record vote)
HB 1716 (non-record vote)
HB 1757 (non-record vote)
HB 1772 (non-record vote)
HB 1794 (non-record vote)
HB 1811 (non-record vote)
HB 1856 (non-record vote)

HB 1887 (132 Ayes, 0 Nays, 1 Present Not Voting)

HB 1913 (134 Ayes, 0 Nays, 1 Present Not Voting)

HB 1938 (135 Ayes, 0 Nays, 1 Present Not Voting)

THE HOUSE HAS REFUSED TO CONCUR IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

HB 1831

House Conferees: Pickett - Chair/Hamric/Hawley/Hill/Swinford

HB 1839

House Conferees: Junell - Chair/Giddings/Jones, Delwin/Thompson/Wolens

HB 2005

House Conferees: Corte - Chair/Counts/King, Tracy/Puente/Walker

HB 2404

House Conferees: Lewis, Ron - Chair/Cook/Corte/Hope/King, Tracy

HB 2530

House Conferees: Junell - Chair/Averitt/Hartnett/Martinez Fischer/McReynolds

HB 2684

House Conferees: Kuempel - Chair/Davis, Yvonne/Jones, Elizabeth/Kolkhorst/Truitt

HB 3507

House Conferees: Maxey - Chair/Gallego/Gray/Thompson/Wohlgemuth

HB 3572

House Conferees: George - Chair/Coleman/Gray/Jones, Elizabeth/Puente

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 658**

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 658** have had the same

under consideration, and beg to report it back with the recommendation that it do pass.

ELLIS
HARRIS
DUNCAN
OGDEN
ZAFFIRINI

JUNELL
COLEMAN
GALLEGO
HEFLIN

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 1444**

Senator Brown 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 **SB 1444** 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.

BROWN
BARRIENTOS
LUCIO
HAYWOOD
ARMBRISTER

WALKER
COOK
COUNTS
R. LEWIS
T. KING

On the part of the Senate

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the general powers and authority of water districts; providing a penalty.

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

SECTION 1. Subsection (d), Section 49.054, Water Code, is amended to read as follows:

(d) If the board appoints a director to serve as treasurer, that director is not subject to the investment officer training requirements of Chapter 2256 [~~Section 2256.007~~], Government Code, unless the director is also appointed as the district's investment officer under Chapter 2256, Government Code.

SECTION 2. Subsection (a), Section 49.057, Water Code, is amended to read as follows:

(a) The board shall be responsible for the management of all the affairs of the district. The district shall employ or contract with all persons, firms, partnerships, corporations, or other entities, public or private, deemed necessary by the board for the conduct of the affairs of the district, including, but not limited to, engineers, attorneys, financial advisors, operators, bookkeepers, tax assessors and collectors, auditors, and administrative staff. The board may appoint an employee of a firm, partnership, corporation, or other entity with which the district has contracted to serve as the investment officer of the district under Chapter 2256 [~~Section 2256.007~~], Government Code.

SECTION 3. Subsection (a), Section 49.060, Water Code, is amended to read as follows:

(a) A director is entitled to receive fees of office of not more than \$150 [~~\$100~~] a day for each day the director actually spends performing the duties of a director. The fees of office may not exceed \$6,000 per annum except for directors of a special water authority which is engaged in the distribution and sale of electric energy to the public.

SECTION 4. Section 49.102, Water Code, is amended by adding a new Subsection (i) and redesignating existing Subsection (i) as Subsection (j) to read as follows:

(i) A district, at an election required under Subsection (a), may submit to the qualified voters of the district the proposition of whether a plan as authorized by Section 49.351 should be implemented or entered into by the district.

(j) The provisions of this section shall not be applicable to any district exercising the powers of Chapter 375, Local Government Code, or any district created by a special Act of the legislature that does not require a confirmation election.

SECTION 5. Section 49.106, Water Code, is amended by adding Subsection (e) to read as follows:

(e) A district's authorization to issue bonds resulting from an election held under this section, or any other law that allows for the qualified voters of a district to authorize the issuance of bonds by a district, remains in effect after the election unless the district is dissolved or is annexed by another district.

SECTION 6. Section 49.107, Water Code, is amended by adding Subsection (g) to read as follows:

(g) Sections 26.04, 26.05, and 26.07, Tax Code, do not apply to a tax levied and collected under this section or an ad valorem tax levied and collected for the payment of the interest on and principal of bonds issued by a district.

SECTION 7. Section 49.108, Water Code, is amended by amending Subsection (e) and adding Subsection (f) to read as follows:

(e) A district that is required under Section 49.181 to obtain approval by the commission of the district's issuance of bonds must obtain approval by the executive director before the district enters into an obligation under this section to collect tax for debt that exceeds three years. This subsection does not apply to contract taxes that are levied to pay for a district's share of bonds that have been issued by another district and approved by the commission or for bonds issued by a municipality.

(f) Sections 26.04, 26.05, and 26.07, Tax Code, do not apply to a tax levied and collected for payments made under a contract approved in accordance with this section.

SECTION 8. Subsection (c), Section 49.151, Water Code, is amended to read as follows:

(c) The board may ~~[by resolution]~~ allow disbursements of district money to be transferred by federal reserve wire system. The board by resolution may allow the wire transfers to accounts in the name of the district or accounts not in the name of the district.

SECTION 9. Subsection (a), Section 49.155, Water Code, is amended to read as follows:

(a) The district may pay out of bond proceeds or other available funds of the district all expenses of the district authorized by this section, including expenses reasonable and necessary to effect the issuance, sale, and delivery of bonds as determined by the board, including, but not limited to, the following:

(1) interest during construction ~~[not to exceed three years after acceptance of the project];~~

(2) capitalized interest not to exceed three years' interest;

(3) reasonable and necessary reserve funds not to exceed two years' interest on the bonds;

(4) interest on funds advanced to the district;

(5) financial advisor, bond counsel, attorney, and other consultant fees;

(6) paying agent, registrar, and escrow agent fees;

(7) right-of-way acquisition;

(8) underwriter's discounts or premiums;

(9) engineering fees, including surveying expenses and plan review fees;

(10) commission and attorney general fees;

(11) printing costs;

(12) all organizational, administrative, and operating costs during creation and construction periods;

(13) the cost of investigation and making plans, including preliminary plans and associated engineering reports;

(14) land required for stormwater control;

(15) costs associated with requirements for federal stormwater permits; and

(16) costs associated with requirements for endangered species permits.

SECTION 10. Subsection (b), Section 49.183, Water Code, is amended to read as follows:

(b) Except for refunding bonds, or bonds sold to a state or federal agency, ~~[after any bonds are finally approved and]~~ before any bonds [they] are sold by a district, the board shall publish an appropriate notice of the sale:

(1) at least one time not less than 10 days before the date of sale in a newspaper of general circulation in the county or counties in which the district is located; and

(2) at least one time in one or more recognized financial publications of general circulation in the state as approved by the state attorney general.

SECTION 11. Section 49.184, Water Code, is amended by adding Subsection (f) to read as follows:

(f) In any proceeding concerning the validity of the creation of a district or the annexation of property by a district, a certificate of ownership as certified by the central appraisal district of the county or counties in which the property is located creates a presumption of ownership, and additional proof of ownership is not required unless there is substantial evidence in the official deed records of the county in which the property is located to rebut the presumption. On request by a district, the central

appraisal district of the county or counties in which the district is located shall furnish certificates of ownership and may charge reasonable fees to recover the actual costs incurred in preparing the certificates.

SECTION 12. Section 49.212, Water Code, is amended by amending Subsections (a) and (d) and adding Subsection (e) to read as follows:

(a) A district may adopt and enforce all necessary charges, mandatory fees, or rentals, in addition to taxes, for providing or making available any district facility or service, including fire-fighting activities provided under Section 49.351.

(d) Notwithstanding any provision of law to the contrary, a district that charges a fee that is an impact fee as described in Section 395.001(4), Local Government Code, must comply with Chapter 395, Local Government Code. A charge or fee by a district for construction, installation, or inspection of a tap or connection to district water, sanitary sewer, or drainage facilities, including all necessary service lines and meters, or for wholesale facilities that serve such water, sanitary sewer, or drainage facilities that (i) does not exceed three times the actual and reasonable costs to the district for such tap or connection, ~~or~~ (ii) if made to a nontaxable entity for retail or wholesale service, does not exceed the actual costs to the district for such work and for all facilities that are necessary to provide district services to such entity and that are financed or are to be financed in whole or in part by tax-supported or revenue bonds of the district, or (iii) if made by a district for retail or wholesale service on land that at the time of platting was not being provided with water or wastewater service by the district, shall not be deemed to be an impact fee under Chapter 395, Local Government Code. A district may pledge the revenues of the district's utility system to pay the principal of or interest on bonds issued to construct the capital improvements for which a fee was imposed under this subsection, and money received from the fees shall be considered revenues of the district's utility system for purposes of the district's bond covenants.

(e) Chapter 2007, Government Code, does not apply to a tax levied, a standby fee imposed, or a charge, fee, or rental adopted or enforced by a district under this chapter, another chapter of this code, or Chapter 395, Local Government Code.

SECTION 13. Section 49.218, Water Code, is amended by adding a new Subsection (d), relettering existing Subsection (d) as Subsection (f), and adding Subsections (e) and (g) to read as follows:

(d) A district or water supply corporation may require a service applicant, as a condition of service, to grant a permanent recorded easement dedicated to the district or water supply corporation that will provide a reasonable right of access and use to allow the district or water supply corporation to construct, install, maintain, replace, upgrade, inspect, and test any facilities necessary to serve that applicant as well as the district's or water supply corporation's purposes in providing systemwide service. A district or water supply corporation may not require an applicant to provide an easement for a service line for the sole benefit of another applicant.

(e) As a condition of service to a new subdivision, a district or water supply corporation may require a developer to provide permanent recorded easements to and throughout the subdivision sufficient to construct, install, maintain, replace, upgrade, inspect, and test any facilities necessary to serve the subdivision's anticipated service demands on full occupancy.

(f) A district or water supply corporation may also lease property from others for its use on such terms and conditions as the board of the district or the board of directors of the water supply corporation may determine to be advantageous.

(g) Property acquired under this section, or any other law allowing the acquisition of property by a district or water supply corporation, and owned by a district or water supply corporation is not subject to assessments, charges, fees, or dues imposed by a nonprofit corporation under Chapter 204, Property Code.

SECTION 14. Section 49.226, Water Code, is amended to read as follows:

Sec. 49.226. SALE OR EXCHANGE OF REAL ~~[SURPLUS LAND]~~ OR PERSONAL PROPERTY. (a) Any personal property valued at more than \$300 or any land or interest in land owned by the district which is found by the board to be surplus and is not needed by the district may be sold under order of the board either by public or private sale, or the land, interest in land, or personal property may be exchanged for other land, interest in land, or personal property needed by the district. Except as provided in Subsection (b), land, interest in land, or personal property must be exchanged for like fair market value, which value may be determined by the district.

(b) Any property dedicated to or acquired by the district without expending district funds may be abandoned or released to the original grantor, the grantor's heirs, assigns, executors, or successors upon terms and conditions deemed necessary or advantageous to the district and without receiving compensation for such abandonment or release. District property may also be abandoned, released, exchanged, or transferred to another district, municipality, county, countywide agency, or authority upon terms and conditions deemed necessary or advantageous to the district. Narrow strips of property resulting from boundary or surveying conflicts or similar causes, or from insubstantial encroachments by abutting property owners, or property of larger configuration that has been subject to encroachments by abutting property owners for more than 25 years may be abandoned, released, exchanged, or transferred to such abutting owners upon terms and conditions deemed necessary or advantageous to the district. Chapter 272, Local Government Code, does ~~shall~~ not apply to this section ~~[subsection]~~.

(c) Before either a public or a private sale of real property ~~[not required by the district]~~, the district shall give notice of the intent to sell by publishing notice once a week for two consecutive weeks in one or more newspapers with general circulation in the district.

(d) If the district has outstanding bonds secured by a pledge of tax revenues, the proceeds of the sale of property ~~[not required by the district]~~ shall be applied to retire outstanding bonds of the district ~~[when required by the district's applicable bond resolutions]~~.

(e) If the district does not have any outstanding bonds, the proceeds derived from the sale of real or [the] personal property ~~[or land not required by the district]~~ may be used for any lawful purpose.

SECTION 15. Subchapter H, Chapter 49, Water Code, is amended by adding Section 49.234 to read as follows:

Sec. 49.234. PROHIBITION OF CERTAIN PRIVATE ON-SITE FACILITIES.
(a) A district or water supply corporation that operates a wastewater collection system to serve land within its boundaries by rule may prohibit the installation of private on-site wastewater holding or treatment facilities on land within the district that is not served by the district's or corporation's wastewater collection system. A district or corporation that has not received funding from Subchapter K, Chapter 17, Water Code, may not require a property owner who has already installed an on-site wastewater holding or treatment facility to connect to the district's or corporation's wastewater collection system.

(b) A district or water supply corporation that prohibits an installation described by Subsection (a) shall agree to pay the owner of a particular tract the costs of connecting the tract to the district's or corporation's wastewater collection system if the distance along a public right-of-way or utility easement from the nearest point of the district's or corporation's wastewater collection system to the boundary line of the tract requiring wastewater collection services is 300 feet or more, subject to commission rules regarding reimbursement of those costs.

SECTION 16. Subsection (c), Section 49.271, Water Code, is amended to read as follows:

(c) The district may adopt minimum criteria for the qualifications of bidders on its construction contracts and for sureties issuing payment and performance bonds. For construction contracts over \$25,000, the district shall require a person who bids to submit a certified or cashier's check on a responsible bank in the state equal to at least two percent of the total amount of the bid, or a bid bond of at least two percent of the total amount of the bid issued by a surety legally authorized to do business in this state, as a good faith deposit to ensure execution of the contract. If the successful bidder fails or refuses to enter into a proper contract with the district, or fails or refuses to furnish the payment and performance bonds ~~bond~~ required by law, the bidder forfeits the deposit. The payment, performance, and bid bonding requirements of this subsection do not apply to a contract for the purchase of equipment, materials, or machinery not otherwise incorporated into a construction project.

SECTION 17. Subsections (i) and (j), Section 49.273, Water Code, are amended to read as follows:

(i) If changes in plans or specifications are necessary after the performance of the contract is begun, or if it is necessary to decrease or increase the quantity of the work to be performed or of the materials, equipment, or supplies to be furnished, the board may approve change orders making the changes. The aggregate of the change orders may not increase the original contract price by more than 10 percent. Additional change [Change] orders [to contracts] may be issued only as a result of unanticipated conditions encountered during construction, repair, or renovation or changes in regulatory criteria or to facilitate project coordination with other political entities.

(j) The board is not required to advertise or seek competitive bids for the repair of district facilities if the scope or extent of the repair work cannot be readily ascertained or if the nature of the repair work does not readily lend itself to competitive bidding [by the district's operator if the cost of the repair is less than or equal to the advertising requirements of this section].

SECTION 18. Section 49.278(a), Water Code, is amended to read as follows:

(a) This subchapter does not apply to:

(1) equipment, materials, or machinery purchased by the district at an auction that is open to the public;

(2) contracts for personal or professional services or for a utility service operator;

(3) contracts made by a district engaged in the distribution and sale of electric energy to the public; ~~or~~

(4) contracts for services or property for which there is only one source or for which it is otherwise impracticable to obtain competition; or

(5) high technology procurements.

SECTION 19. Subchapter I, Chapter 49, Water Code, is amended by adding Section 49.279 to read as follows:

Sec. 49.279. PREVAILING WAGE RATES. In addition to the alternative procedures provided by Section 2258.022, Government Code:

(1) a district located wholly or partially within one or more municipalities or within the extraterritorial jurisdiction of one or more municipalities may determine its prevailing wage rate for public works by adopting the prevailing wage rate of:

(A) one of the municipalities; or

(B) the county in which the district is located or, if the county in which the district is located has not adopted a wage rate, the prevailing wage rate of a county adjacent to the county in which the district is located; and

(2) a district not located wholly or partially within the extraterritorial jurisdiction of a municipality may determine the district's prevailing wage rate by adopting the prevailing wage rate of the county in which the district is located or, if the county in which the district is located has not adopted a wage rate, the wage rate of a county adjacent to the county in which the district is located.

SECTION 20. Subsection (b), Section 49.302, Water Code, is amended to read as follows:

(b) A petition requesting the annexation of a defined area signed by a majority in value of the owners of land in the defined area, as shown by the tax rolls of the central appraisal district of the county or counties in which such area is located, or signed by 50 landowners if the number of landowners is more than 50, shall describe the land by metes and bounds or by lot and block number if there is a recorded plat of the area and shall be filed with the secretary of the board.

SECTION 21. Subsection (a), Section 49.304, Water Code, is amended to read as follows:

(a) If the board determines that an exclusion hearing should be held as provided by Section 49.303(a) or (c), or if a written petition requesting an exclusion hearing is filed with the secretary of the board as provided by ~~im~~ Section 49.303(b) ~~[49.303]~~, the board shall give notice of the time and place of a hearing to announce its own conclusions relating to land or other property to be excluded and to receive petitions for exclusion of land or other property.

SECTION 22. Subchapter J, Chapter 49, Water Code, is amended by adding Section 49.315 to read as follows:

Sec. 49.315. ADDING AN EXCLUDING LAND BEFORE CONFIRMATION.

(a) A district may add or exclude land in accordance with this subchapter:

(1) after a district is created by order of the commission or another governmental entity or by special Act of the legislature; and

(2) before a confirmation election is held as required by Section 49.102.

(b) If land is added or excluded as provided by this section, the election to confirm the district required by Section 49.102 shall be to confirm the district as modified.

SECTION 23. Section 49.351, Water Code, is amended by amending Subsections (a), (b), and (c) and (g) through (j) and adding Subsection (l) to read as follows:

(a) A district providing potable water or sewer service to household users may establish, operate, and maintain a fire department to perform all fire-fighting activities within the district as provided in this subchapter and may issue bonds or impose a mandatory fee, with voter approval, ~~bonds~~ for financing a plan approved in accordance with this section, ~~the establishment of the fire department~~ including the construction and purchase of necessary buildings, facilities, land, and equipment and the provision of an adequate water supply.

(b) After approval of the district electors of a plan to operate, ~~or~~ jointly operate, or jointly fund the operation of a fire department, and after complying with Subsections (g), (h), and (i), the district or districts shall provide an adequate system and water supply for fire-fighting purposes, may purchase necessary land, may construct and purchase necessary buildings, facilities, and equipment, and may employ or contract with a fire department to employ all necessary personnel including supervisory personnel to operate the fire department.

(c) Bonds ~~issued~~ for financing a plan approved in accordance with this section [establishment of the fire department] shall be authorized and may be issued, and a district shall be authorized to levy a tax to pay the principal of and interest on such bonds, as provided by law for authorization and issuance of other bonds of the district.

(g) A district or districts proposing to act jointly shall develop a detailed plan for the establishment, operation, and maintenance of the proposed department, including a detailed presentation of all financial requirements. If a district is entering into a contract under Subsection (e), the district shall develop a plan that describes ~~in detail~~ the contract and [facilities and equipment to be devoted to service to the district and all proposals for providing the service and that] includes a presentation of the financial requirements under the contract. A plan required by this subsection may be included in a plan or report otherwise required by this title for the creation of a district or may be submitted to the commission for approval at any time after the creation of the district. ~~[Before adoption of a plan and any contract by the district, the board shall hold a hearing at which any person residing in the district may present testimony for and against the proposed plan and any proposed contract. Notice of the hearing and the place at which the plan and any contract may be examined shall be posted in two public places within the district at least 10 days before the date of the hearing.]~~

(h) If a plan was not approved by the commission at the time of the district's creation, after [After] adoption of the plan and any contract by the board, the plan and financial presentation, together with any contract and a written report in a form prescribed by the executive director describing existing fire departments and fire-fighting services available within 25 miles of the boundaries of the district, shall be submitted to the executive director for consideration by the commission under rules adopted by the commission. ~~[Before approval or disapproval, the commission shall hold a hearing. Notice of the hearing before the commission shall be posted by the board in at least two public places in the district at least five days before the hearing.]~~ Before the commission approves the application, it must find that it is economically feasible for the district to implement the plan and meet the provisions of any contract and shall take into consideration in giving its approval the general financial condition of the district and the economic feasibility of the district carrying out the plan or meeting the obligations of the contract. A plan approved by the commission as part of the creation of a district does not require further commission approval unless the district materially alters the plan.

(i) After approval of a plan by the commission, the district shall submit to the electors of the district at the election to approve bonds or to impose a mandatory fee for financing the plan, or if no bonds or fees are to be approved, at an election called for approval of the plan, which may be held in conjunction with an election required by Section 49.102, the proposition of whether or not the plan should be implemented or entered into by the district. The ballots at the election shall be printed, as applicable, to provide for voting for or against the proposition: "The implementation of the plan for (operation/joint operation) of a fire department"; or "The plan and contract to provide fire-fighting services for the district."

(j) ~~[No funds of the district may be used to establish a fire department, to enter into joint operation of a fire department, or to contract for fire-fighting services without the approval of a plan by the electors as provided in this section. However, the district may use available funds for preparation of a plan and any contract.]~~ The operation of a fire department or provision of fire-fighting services is an essential public necessity, and a district may discontinue any and all services, including water and sewer service, to any person who fails to timely pay fire department service fees or any other assessment adopted by the district to support the fire department or the provision of fire-fighting services.

(l) Notwithstanding the requirements of Subsections (a)-(j), a district providing potable water or sewer service to household users may as part of its billing process collect from its customers a voluntary contribution on behalf of organizations providing fire-fighting activities to the district. A district that chooses to collect a voluntary contribution under this subsection must give reasonable notice to its customers that the contribution is voluntary. Water and sewer service may not be terminated as a result of failure to pay the voluntary contribution.

SECTION 24. Chapter 49, Water Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. RECREATIONAL FACILITIES

Sec. 49.461. POLICY AND PURPOSE. (a) The legislature finds that:

(1) the provision of parks and recreational facilities is necessary and desirable for the health and well-being of the people of this state;

(2) it is the policy of the state and the purpose of this subchapter to encourage persons in districts to provide parks and recreational facilities for their use and benefit;

(3) within constitutional limitations, the power to enact laws vested in the legislature by Section 1, Article III, Texas Constitution, is supreme;

(4) there is no constitutional inhibition that would prohibit the legislature from authorizing districts to acquire, own, develop, construct, improve, manage, operate, and maintain parks and recreational facilities; and

(5) the general legislative power alone is adequate to support the enactment of this subchapter without reference to any specific constitutional authorization.

(b) This subchapter provides complete authority to a district to develop and maintain recreational facilities.

Sec. 49.462. DEFINITIONS. In this subchapter:

(1) "Recreational facilities" means parks, landscaping, parkways, greenbelts, sidewalks, trails, public right-of-way beautification projects, and recreational equipment and facilities. The term includes associated street and security lighting.

(2) "Develop and maintain" means to acquire, own, develop, construct, improve, manage, maintain, and operate.

Sec. 49.463. AUTHORIZATION OF RECREATIONAL FACILITIES. In addition to the other purposes for which a district is created, a district is created for the purpose of developing and maintaining recreational facilities for the people in the district. A district may accomplish this purpose as provided in this subchapter.

Sec. 49.464. ACQUISITION OF AND PAYMENT FOR RECREATIONAL FACILITIES. (a) A district may not issue bonds supported by ad valorem taxes to pay for the development and maintenance of recreational facilities.

(b) Except as provided by Subsection (a), a district may acquire recreational facilities and obtain funds to develop and maintain them in the same manner as

authorized elsewhere in this code for the acquisition, development, and maintenance of other district facilities. A district may charge fees directly to the users of recreational facilities and to water and wastewater customers of the district to pay for all or part of the cost of their development and maintenance. To enforce payment of an unpaid fee charged under this subsection, the district may:

- (1) seek legal restitution of the unpaid fee; and
- (2) refuse use of a recreational facility to the person who owes the unpaid fee.

(c) The district may not refuse use of facilities or services other than recreational facilities to enforce an unpaid fee.

Sec. 49.465. STANDARDS. The board by rule shall establish standards for recreational facilities to be developed and maintained by a district and for the allocation of a district's funds for developing and maintaining recreational facilities in relation to a district's financial requirements for other purposes. To prevent duplication of recreational facilities provided by other governmental entities, rules adopted by the board under this section must require a district, before developing recreational facilities, to make findings that the size and location of the facilities have been established in consideration of municipal or county recreational facilities, whether existing or proposed, that serve or will serve the area in which the district is located.

SECTION 25. Subsection (a), Section 51.013, Water Code, is amended to read as follows:

(a) A petition requesting creation of a district shall be signed by a majority of the persons who hold title to land in the proposed district which represents a total value of more than 50 percent of the value of all the land in the proposed district as indicated by the [county] tax rolls of the central appraisal district. If there are more than 50 persons holding title to land in the proposed district, the petition is sufficient if signed by 50 of them.

SECTION 26. Subchapter D, Chapter 51, Water Code, is amended by adding Section 51.122 to read as follows:

Sec. 51.122. ADOPTING RULES AND REGULATIONS. A district may adopt and enforce reasonable rules and regulations to:

(1) secure and maintain safe, sanitary, and adequate plumbing installations, connections, and appurtenances as subsidiary parts of the district's sanitary sewer system;

(2) preserve the sanitary condition of all water controlled by the district;

(3) prevent waste or the unauthorized use of water controlled by the district;

(4) regulate privileges on any land or any easement owned or controlled by the district; or

(5) provide and regulate a safe and adequate freshwater distribution system.

SECTION 27. Chapter 51, Water Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. ENFORCEMENT

Sec. 51.221. PENALTY FOR VIOLATION OF REGULATION. A person who violates a regulation adopted by a district under this chapter or other law commits an offense. An offense under this section is a Class C misdemeanor.

SECTION 28. Section 53.021, Water Code, is amended to read as follows:

Sec. 53.021. OFFICERS TO BE ELECTED. In the election, five supervisors [and the tax assessor and collector] are elected.

SECTION 29. Section 54.014, Water Code, is amended to read as follows:

Sec. 54.014. PETITION. When it is proposed to create a district, a petition requesting creation shall be filed with the commission. The petition shall be signed by a majority in value of the holders of title of the land within the proposed district, as indicated by the [county] tax rolls of the central appraisal district. If there are more than 50 persons holding title to the land in the proposed district, as indicated by the [county] tax rolls of the central appraisal district, the petition is sufficient if it is signed by 50 holders of title to the land.

SECTION 30. Section 54.236, Water Code, is amended to read as follows:

Sec. 54.236. STREET OR SECURITY LIGHTING. Subject to the provisions of this section, a district may purchase, install [accept], operate, and maintain street lighting or security lighting within public utility easements or public rights-of-way within the boundaries of the district. [~~Such street or security lighting facilities must have been constructed by an owner or developer of property within the district and must have been required by a city as a condition to the city granting its consent to the creation of the district pursuant to Section 54.016 of this code.~~] A district may not issue bonds supported by ad valorem taxes to pay for the purchase, installation, [development] and maintenance of street or security lighting.

SECTION 31. Subdivision (1), Section 54.772, Water Code, is amended to read as follows:

(1) "Recreational facilities" means parks, landscaping, parkways, greenbelts, sidewalks, trails, public right-of-way beautification projects, and recreational equipment and facilities. The term includes associated street and security lighting.

SECTION 32. Subsection (a), Section 54.774, Water Code, is amended to read as follows:

(a) A district may not issue bonds supported by ad valorem taxes to pay for the development and maintenance of recreational facilities.

SECTION 33. Subsection (a), Section 57.092, Water Code, is amended to read as follows:

(a) The district may enter into all necessary and proper contracts and employ all persons and means necessary to purchase, acquire, build, construct, complete, carry out, maintain, protect, and, in case of necessity, add to and rebuild all works and improvements [~~within the district~~] necessary or proper to fully accomplish a reclamation plan lawfully adopted for the district.

SECTION 34. Subchapter D, Chapter 57, Water Code, is amended by adding Section 57.093 to read as follows:

Sec. 57.093. ADOPTING RULES AND REGULATIONS. A district may adopt and enforce reasonable rules and regulations to:

(1) preserve the sanitary condition of all water controlled by the district;
(2) prevent waste or the unauthorized use of water controlled by the district;
(3) regulate privileges on any land or any easement owned or controlled by the district;

(4) regulate the design and construction of improvements and facilities that outfall, connect, or tie into district improvements and facilities; or

(5) require the district's review and approval of drainage plans for property within the district.

SECTION 35. Subchapter B, Chapter 101, Civil Practice and Remedies Code, is amended by adding Section 101.0211 to read as follows:

Sec. 101.0211. NO LIABILITY FOR JOINT ENTERPRISE. The common law doctrine of vicarious liability because of participation in a joint enterprise does not impose liability on a water district created pursuant to either Sections 52(b)(1) and (2), Article III, or Section 59, Article XVI, Texas Constitution, regardless of how created, for a claim brought under this chapter.

SECTION 36. Subchapter B, Chapter 402, Local Government Code, is amended by adding Section 402.0205 to read as follows:

Sec. 402.0205. REVENUE BONDS TO PAY FOR DISTRICT SERVICES UNDER CONTRACT. (a) In this section, "district" has the meaning assigned by Section 49.001, Water Code.

(b) If a district contracts with a municipality to provide all or part of the water or wastewater services to the municipality, the municipality may issue bonds payable from the revenues of its water and wastewater system to provide funds to make payments owed by the municipality to the district under the contract.

SECTION 37. Subchapter Z, Chapter 402, Local Government Code, is amended by adding Section 402.908 to read as follows:

Sec. 402.908. SALE OF WATER OR SEWER SYSTEM. A municipality, without an election, may sell to a water district operating under the authority of Section 59, Article XVI, Texas Constitution, a water or sewer system owned by the municipality.

SECTION 38. Subchapter Z, Chapter 402, Local Government Code, is amended by adding Section 402.909 to read as follows:

Sec. 402.909. PROHIBITED EMPLOYMENT OF OR CONTRACTING WITH FORMER TRUSTEE OR BOARD MEMBER. (a) This section applies to a municipality that creates a board of trustees or other board to manage and control a water, wastewater, storm water, or drainage utility system that the municipality owns.

(b) The municipality or a board of trustees or other board described by Subsection (a) may not employ or contract with an individual who was a member of the board before the second anniversary of the date the individual ceased to be a member of the board.

SECTION 39. Sections 4.03(a) and (b), Chapter 1029, Acts of the 76th Legislature, Regular Session, 1999, are amended to read as follows:

(a) The authority may establish fees, rates, and charges, and classifications of fee and rate payers, as necessary to enable the authority to fulfill the authority's purposes and regulatory obligations provided by this Act.

(b) The authority may charge against the owner of a well located in the authority's boundaries a fee on the amount of water pumped from the well. The board shall establish the rate of a fee under this subsection only after a special meeting on the fee. The board shall by rule exempt from the fee under this subsection those classes of wells that are not subject to groundwater reduction requirements imposed by the subsidence district, except that if any of those classes of wells become subject at a future date to a groundwater reduction requirement imposed by the subsidence district, then the authority may after that date charge the fee under this subsection to those affected classes of wells. The board by rule may exempt any other classes of wells from the fee under this subsection. The board may not apply the fee to a well:

(1) with a casing diameter of less than five inches that serves a single-family dwelling;

(2) regulated under Chapter 27, Water Code;

(3) used for irrigation of agricultural crops; or

(4) ~~[that produces 10 million gallons or less annually; or~~

~~[(5)]~~ used solely for electric generation.

SECTION 40. 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.

SECTION 41. Sections 53.024, 57.152, and 57.153, Water Code, are repealed.

SECTION 42. (a) In this section "district" means a conservation and reclamation district created under Section 52, Article III, and Section 59, Article XVI, Texas Constitution.

(b) The following are validated and confirmed in all respects:

(1) the creation of a district and all proceedings related to the creation of the district, effective as of the date on which the creation or related proceedings occurred; and

(2) any act or proceeding of a district, including an election, not excepted by this section and taken not more than two years before the effective date of this Act, effective as of the date on which the act or proceeding occurred.

(c) Subsection (b) of this section does not apply to:

(1) an act, proceeding, director, other official, bond, or other obligation the validity of which or of whom is the subject of litigation that is pending on the effective date of this Act; or

(2) a governmental act or proceeding that, under the law of this state at the time the act or proceeding occurred, was a misdemeanor or a felony.

SECTION 43. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 606**

Senator Nelson 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 606** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

NELSON
ZAFFIRINI
FRASER
LUCIO
HARRIS

SMITHEE
URESTI
AVERITT

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 1922**

Senator Madla submitted the following Conference Committee Report:

Austin, Texas
May 24, 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 1922** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

MADLA
WEST
CARONA
NELSON
DUNCAN

GALLEGO
BOSSE
GRAY
WOLENS
MCCALL

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 516**

Senator Madla 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 516** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

MADLA
STAPLES
LUCIO
CARONA

HAWLEY
HOPSON
B. TURNER
MCCLENDON
COOK

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to creating the rural physician relief program.

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

SECTION 1. Chapter 106, Health and Safety Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. RURAL PHYSICIAN RELIEF PROGRAM

Sec. 106.251. DEFINITIONS. In this subchapter:

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

(2) "Relief services" means:

(A) the temporary coverage of a physician's practice by another physician for a predetermined time during the physician's absence and before the physician's return; or

(B) the intended practice of medicine by a person who is applying for a license as a physician in this state and who promises to practice medicine in a rural area as defined by Subdivision (3)(A).

(3) "Rural" means:

(A) a community located in a county with a population not greater than 50,000; or

(B) an area designated under state or federal law as:

(i) a health professional shortage area; or

(ii) a medically underserved area; or

(C) a medically underserved community designated by the center.

Sec. 106.252. RURAL PHYSICIAN RELIEF PROGRAM. (a) The center shall create a program to provide affordable relief services to rural physicians practicing in the fields of general family medicine, general internal medicine, and general pediatrics to facilitate the ability of those physicians to take time away from their practice.

(b) As part of the program under this subchapter, the center shall provide the statement required by Section 155.056(c), Occupations Code, for an applicant for a license as a physician who promises to provide relief services as described by Section 106.251(2)(B).

Sec. 106.253. FEES. (a) The center shall charge a fee for rural physicians to participate in the program.

(b) The fees collected under this section shall be deposited in a special account in the general revenue fund that may be appropriated only to the center for administration of this subchapter.

Sec. 106.254. FUNDING. The center may solicit and accept gifts, grants, donations, and contributions to support the program.

Sec. 106.255. RELIEF PHYSICIAN'S EXPENSES. The center shall pay a physician providing relief under the program using fees collected by the center.

Sec. 106.256. PRIORITY ASSIGNMENT OF RELIEF PHYSICIANS. (a) The center shall assign physicians to provide relief to a rural area in accordance with the following priorities:

(1) solo practitioners;

(2) counties that have fewer than seven residents per square mile;

(3) counties that have been designated under federal law as a health professional shortage area;

(4) counties that do not have a hospital; and

(5) counties that have a hospital but do not have a continuously staffed hospital emergency room.

(b) In determining where to assign relief physicians, the center shall consider the number of physicians in the area available to provide relief services and the distance in that area to the nearest physician that practices in the same specialty.

(c) At the request of the center, residency program directors may assist the center in coordinating the assignment of relief physicians.

Sec. 106.257. RELIEF PHYSICIAN RECRUITMENT. The center shall actively recruit physicians to participate in the program as relief physicians. The center shall concentrate on recruiting physicians involved in an accredited residency program in general pediatrics, general internal medicine, and general family medicine, physicians registered on the center's locum tenens registry, physicians employed at a medical school, and physicians working for private locum tenens groups.

Sec. 106.258. APPLICATION. This subchapter does not authorize the unlicensed practice of medicine.

SECTION 2. Section 155.056, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsections (a) and (b), an applicant is considered to have satisfied the requirements of this section if the applicant:

(1) passed all but one part of an examination approved by the board within three attempts and passed the remaining part of the examination within six attempts;

(2) is specialty board certified by a specialty board that:

(A) is a member of the American Board of Medical Specialties; or

(B) is approved by the American Osteopathic Association;

(3) is a pharmacist licensed by the Texas State Board of Pharmacy;

(4) submits an affidavit with the application that the applicant intends to provide relief services, as described by Section 106.251(2)(B), Health and Safety Code;

(5) provides a statement from the Center for Rural Health Initiatives that the services the applicant promises to provide qualify as relief services under Section 106.251, Health and Safety Code; and

(6) has completed, in this state, at least three years of postgraduate medical training approved by the board.

SECTION 3. Subchapter B, Chapter 155, Occupations Code, is amended by adding Section 155.059 to read as follows:

Sec. 155.059. LICENSE TO PRACTICE IN RURAL AREAS. The board may issue a license to practice medicine to an applicant who qualifies for a license under Section 155.056(c). A person licensed under this section may only practice medicine in a rural area as defined by Section 106.251(3)(A), Health and Safety Code.

SECTION 4. 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 again submitted the following Conference Committee Report:

Austin, Texas
May 24, 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
MONCRIEF
DUNCAN
BIVINS
WHITMIRE

On the part of the Senate

HINOJOSA
MARTINEZ FISCHER
KEEL
KITCHEN
DUNNAM

On the part of the House

The Conference Committee Report was again filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2446**

Senator Madla 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 2446** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

MADLA
SHAPLEIGH
VAN DE PUTTE
STAPLES

GLAZE
CAPELO
COLEMAN
DUNNAM
URESTI

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 22**

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas
May 24, 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 22** 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.

SHAPIRO
NELSON
HARRIS
MONCRIEF
ARMBRISTER

SMITH
GRAY
MADDEN
MAXEY
URESTI

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the admission of minors to facilities for and to the consent of minors to the treatment and rehabilitation of chemical dependency.

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

SECTION 1. This Act may be known as "JoJo's Law."

SECTION 2. Subsection (a), Section 462.009, Health and Safety Code, is amended to read as follows:

(a) A patient receiving treatment in a treatment facility is entitled to refuse a medication, therapy, or treatment unless:

(1) the patient is younger than 18 [~~16~~] years of age, the patient is admitted under Section 462.022(a)(3)(A), and the patient's parent, managing conservator, or guardian consents to the medication, therapy, or treatment on behalf of the patient;

(2) the patient has been adjudicated to be incompetent to manage the patient's personal affairs or to make a decision to refuse the medication, therapy, or treatment and the patient's guardian of the person or another person legally authorized to consent to medical treatment consents to the medication, therapy, or treatment on behalf of the patient; or

(3) a physician treating the patient determines that the medication is necessary to prevent imminent serious physical harm to the patient or to another individual and the physician issues a written order, or a verbal order if authenticated in writing by the physician within 24 hours, to administer the medication to the patient.

SECTION 3. Section 462.022, Health and Safety Code, is amended by amending Subsections (a) and (c) and adding Subsection (d) to read as follows:

(a) A facility may admit a minor for treatment and rehabilitation if:

(1) the facility is:

(A) a treatment facility licensed by the commission to provide the necessary services to minors; [~~or~~]

(B) a facility licensed by the Texas Department of Mental Health and Mental Retardation; or

(C) a facility operated by the Texas Department of Mental Health and Mental Retardation which has been designated by the commission to provide chemical dependency treatment;

(2) the admission is appropriate under the facility's admission policies; and

(3) the admission is requested by:

(A) a parent, managing conservator, or guardian of [~~if~~] the minor [~~is younger than 16 years of age~~]; or

(B) the minor, without parental consent, if the minor is 16 years of age or older.

(c) A person or agency appointed as the guardian or a managing conservator of a minor [~~younger than 16 years of age~~] and acting as an employee or agent of the state or a political subdivision of the state may request admission of the minor only with the minor's consent.

(d) In this section, "minor" means an individual younger than 18 years of age for whom the disabilities of minority have not been removed.

SECTION 4. Subsection (b), Section 462.023, Health and Safety Code, is amended to read as follows:

(b) A facility is not required to release the patient if before the end of the 96-hour period:

(1) the patient files a written withdrawal of the request;

(2) an application for court-ordered treatment or emergency detention is filed and the patient is detained in accordance with this chapter; or

(3) the patient is a minor under the age of 16 admitted with the consent of a parent, guardian, or conservator and that person, after consulting with facility personnel, objects in writing to the release of the patient [~~minor~~].

SECTION 5. Subchapter B, Chapter 462, Health and Safety Code, is amended by adding Section 462.0235 to read as follows:

Sec. 462.0235. DISCHARGE OR RELEASE OF MINOR 16 OR 17 YEARS OF AGE. (a) Except as provided by this section, a facility shall release a minor who is 16 or 17 years of age within a reasonable time, not to exceed 96 hours, after:

(1) the minor requests in writing to be released; or

(2) for a minor admitted under Section 462.022(a)(3)(A), the minor's parent, managing conservator, or guardian requests the release in writing.

(b) A facility is not required to release a minor who is 16 or 17 years of age within the period described by Subsection (a) if:

(1) the request is filed with the facility by the minor before the 15th day after the date of the minor's admission to the facility; or

(2) the request is filed with the facility by the minor on or after the 15th day after the minor's date of admission to the facility and, not later than 96 hours after the request is filed:

(A) the minor files with the facility a written withdrawal of the minor's request; or

(B) an examining physician places in the minor's medical record a certificate of medical examination described by Subsection (c).

(c) The certificate of medical examination placed in a minor's medical record under Subsection (b)(2)(B) must include:

(1) the name and address of the examining physician;

(2) the name and address of the examined minor;

(3) the date and place of the examination;

(4) a brief diagnosis of the examined minor's physical and mental condition;

(5) the period, if any, during which the examined minor has been under the care of the examining physician;

(6) an accurate description of the chemical dependency treatment, if any, administered to the examined minor by or under the direction of the examining physician; and

(7) the examining physician's opinion that:

(A) the examined minor is chemically dependent;

(B) there is no reasonable alternative to the treatment the physician recommends for the examined minor; and

(C) as a result of the examined minor's chemical dependency, the minor, if released, is likely to cause serious harm to the minor or others or:

(i) would suffer severe and abnormal mental, emotional, or physical distress;

(ii) would experience a substantial mental or physical deterioration of the minor's ability to function independently that would be manifested by the minor's inability, for reasons other than indigence, to provide for the minor's basic needs, including food, clothing, health, and safety; and

(iii) would not be able to make a rational and informed decision as to whether to submit to treatment.

(d) A facility shall release a minor whose release was postponed under Subsection (b)(2)(B) on the 15th day after the date of the most recent examination for

which a certificate described by Subsection (c) is performed unless the physician conducts an additional examination of the minor and places another certificate of examination described by Subsection (c) in the minor's medical record.

(e) If a minor who is 16 or 17 years of age requests to be released from a facility on or after the 60th day after the date of the minor's admission to the facility, the facility shall release the minor within a reasonable time, not to exceed 96 hours, unless:

(1) an application for court-ordered treatment of the minor or for emergency detention of the minor is filed; and

(2) the minor is detained in accordance with this chapter.

(f) If extremely hazardous weather conditions exist or a disaster occurs, the facility administrator may request the judge of a court that has jurisdiction over proceedings brought under Subchapter D to extend the period during which a minor may be detained under this section. The judge or a magistrate appointed by the judge may, by written order made each day, extend the period during which the minor may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolution

HCR 290 (Sibley), Honoring the memory of Richard Dale Cottle of Woodway.

Congratulatory Resolutions

SR 1180 by Armbrister, Recognizing Cuero as a starting point of the Chisholm Trail.

SR 1184 by Barrientos, Congratulating Jose Navarro of Taylor.

SR 1185 by Whitmire, Congratulating Ryan W. Johnson.

SR 1188 by Madla, Congratulating Bob Baker of San Antonio.

SR 1189 by Lindsay, Commending the academic team of Klein High School in Klein.

SR 1191 by Duncan, Recognizing Clint and Margaret Clark Formby of Hereford.

SR 1194 by Shapiro, Congratulating Ben Thomas of Plano.

SR 1197 by Lucio, Recognizing the Texas Tomorrow Fund Poster Contest.

SR 1198 by Lucio, Congratulating Sabrina Fox of Brownsville.

SR 1199 by Lucio, Congratulating Mellena Hardee Conner of Brownsville.

HCR 120 (Moncrief), Honoring the Work Advantage Tarrant County Workforce Development Board for its many civic contributions.

HCR 128 (Moncrief), Honoring Steve Palko for being named Business Volunteer of the Year by the National Alliance of Business.

ADJOURNMENT

Pursuant to a previously adopted motion, the Senate at 8:22 p.m. adjourned, in memory of Charles Alan Wright, until 10:00 a.m. tomorrow.

APPENDIX

SENT TO SECRETARY OF STATE

May 24, 2001

SJR 32

SENT TO GOVERNOR

May 24, 2001

SB 18, SB 40, SB 53, SB 159, SB 194, SB 200, SB 214, SB 252, SB 257, SB 263, SB 283, SB 332, SB 390, SB 395, SB 454, SB 456, SB 482, SB 486, SB 496, SB 497, SB 505, SB 531, SB 557, SB 586, SB 593, SB 625, SB 671, SB 691, SB 720, SB 751, SB 769, SB 799, SB 840, SB 847, SB 869, SB 903, SB 932, SB 998, SB 1001, SB 1006, SB 1016, SB 1024, SB 1036, SB 1053, SB 1064, SB 1085, SB 1160, SB 1174, SB 1176, SB 1180, SB 1214, SB 1226, SB 1235, SB 1288, SB 1293, SB 1294, SB 1302, SB 1345, SB 1353, SB 1367, SB 1390, SB 1396, SB 1417, SB 1470, SB 1581, SB 1632, SB 1659, SB 1683, SB 1713, SB 1727, SB 1732, SB 1736, SB 1758, SB 1759, SB 1781, SB 1782, SB 1784, SB 1793, SB 1796, SB 1800, SB 1807, SB 1808, SB 1818, SB 1823, SB 1831, SB 1840, SCR 1, SCR 2, SCR 21, SCR 24, SCR 35, SCR 37, SCR 51, SCR 54

SIGNED BY GOVERNOR

May 24, 2001

SB 1096, SB 1140, SCR 69

In Memory
of
Charles Alan Wright

Senator Barrientos offered the following resolution:

(Senate Resolution 1129)

WHEREAS, The Senate of the State of Texas joins citizens across the state in mourning the loss of Charles Alan Wright, an internationally renowned expert on constitutional law and the federal courts, who died July 7, 2000; and

WHEREAS, A native of Philadelphia, Professor Wright was born September 3, 1927; after graduating from high school at 16, he enrolled in Wesleyan University and finished his bachelor's degree in two years; and

WHEREAS, An alumnus of Yale Law School, Professor Wright began his distinguished teaching career at the University of Minnesota in 1950, and five years later, he joined the faculty of The University of Texas Law School; and

WHEREAS, While at The University of Texas Law School, Professor Wright held the Charles T. McCormick Professorship, the William B. Bates Chair for the Administration of Justice, the Hayden W. Head Regents Chair In Excellence, and the Vinson and Elkins Law Chair; he was the first holder of the Charles Alan Wright Chair in Federal Courts, which was created by donations from his friends and former students; and

WHEREAS, During his career, Professor Wright argued 13 cases before the United States Supreme Court, winning 11; additionally, he argued many cases in courts of appeal and the state supreme court; and

WHEREAS, A gifted legal scholar, Professor Wright completed a prodigious amount of work during his career; both his *Cases on Federal Courts* and *Wright on Federal Courts* are heavily relied upon by practitioners, judges, and academics; and

WHEREAS, No matter his celebrated academic credentials and professional duties, Professor Wright always found time for his students and for The University of Texas; whether he was serving as coach of the law school's intramural touch football team or as chairman of the Faculty Senate, his commitment to the university and to his students was manifest, and he was a much-loved and respected figure on campus; and

WHEREAS, For his professional expertise and his excellence in teaching, Professor Wright was often recognized; the Lifetime Achievement Award at The University of Texas School of Law, the Student Bar Association Teaching Excellence Award, and the Distinguished Alumnus Award from Wesleyan University were but three of the many honors accorded him over his lifetime; and

WHEREAS, Charles Alan Wright made an indelible mark on the legal field, and Texas was truly fortunate to call this distinguished gentleman one of its citizens; he leaves behind a legacy of brilliant legal scholarship and memories that his family, friends, students, and colleagues will treasure forever; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby extend sincere condolences to the family of Charles Alan Wright: his wife, Eleanor Custis Wright; his son, Charles Edward Wright; his daughters, Eleanor Custis Clarke, Margot Clarke, Henrietta Wright, and Cecily Wright Fitzsimons; and his six grandchildren; and, be it further

RESOLVED, That a copy of this Resolution be prepared for his family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of Charles Alan Wright.

BARRIENTOS
BROWN
CAIN

The resolution was read.

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

On motion of Senator Barrientos and by unanimous consent, the resolution was adopted by a rising vote of the Senate.

Senator Barrientos, joined by Senators Brown and Cain, was recognized and introduced to the Senate family members of Charles Alan Wright: his widow, Eleanor Custis Wright; his daughters, Margot Clarke, Henrietta Wright, and Cecily Wright Fitzsimons; his grandsons, Sean Charles Fitzsimons and Declan Thomas Fitzsimons; and his granddaughter, Sierra Wright Stead.

The Senate welcomed its guests and extended its sympathy.