

EIGHTY-FIRST DAY

FRIDAY, MAY 25, 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.

Senate Doorkeeper Don Long offered the invocation as follows:

Dear heavenly Father, I lift up Lieutenant Governor Ratliff to You this morning. I know he is in Your hands, so I ask You to guide him in the way You would have him to go. I pray that You would surround each Senator with wise counsel, men and women of integrity who place Your agenda and the good of the State of Texas above their own and whose motives are for that which is right. Give these Senators discernment, understanding, and knowledge so that our state may know stability and strength of character. And God bless each and every one in this Senate Chamber. Amen.

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

CONCLUSION OF MORNING CALL

The President at 10:05 a.m. announced the conclusion of morning call.

SENATE BILL 515 WITH HOUSE AMENDMENTS

Senator Madla called **SB 515** 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 515**, as follows:

Amend SECTION 1, Sec. 672.007, by striking proposed Subsection (d) in its entirety.

Amend SECTION 1, Sec. 672.009, by striking proposed Subsection (d) in its entirety.

Amend SECTION 1, by adding a new Subsection 672.010 to read as follows:

Sec. 672.010. CIVIL LIABILITY FOR DISCLOSURE OF INFORMATION. Subject to the limits described in Section 101.023(b), Civil Practice and Remedies Code, a team organized pursuant to this chapter, or any member thereof may be civilly liable for damages caused by the disclosure of information gathered pursuant to an investigation if such disclosure is made in violation of Section 672.007 and Section 672.009 of this chapter.

Floor Amendment No. 2

Amend **SB 515** as follows:

(1) In Section 672.003(a), Health and Safety Code, as added by SECTION 1 of the bill (House Committee Report, page 4, lines 8-10), strike "(1) providing assistance, direction, and coordination to the investigations of deaths from suicide, family violence, or abuse;" and renumber the subsequent subdivisions accordingly.

Floor Amendment No. 1 on Third Reading

Amend **SB 515** on third reading by adding the following appropriately numbered SECTIONS to the bill and renumbering existing SECTIONS of the bill appropriately:

SECTION 3. Section 33.003(i), Family Code, is amended to read as follows:

(i) The court shall determine by a preponderance of the evidence whether the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to either of her parents or a managing conservator or guardian, whether notification would not be in the best interest of the minor, or whether notification may lead to [~~physical, sexual, or emotional~~] abuse of the minor. If the court finds that the minor is mature and sufficiently well informed, that notification would not be in the minor's best interest, or that notification may lead to [~~physical, sexual, or emotional~~] abuse of the minor, the court shall enter an order authorizing the minor to consent to the performance of the abortion without notification to either of her parents or a managing conservator or guardian and shall execute the required forms. In this subsection, "abuse" has the meaning assigned by Section 261.001.

SECTION 3. The change in law made by this Act to Section 33.003(i), Family Code, applies to any judicial bypass hearing that is conducted in a trial court under Section 33.003, Family Code, on or after the effective date of this Act.

The amendments were read.

Senator Madla 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 515** 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 Madla, Chair; Sibley, Lucio, Carona, and Van de Putte.

SENATE BILL 1173 WITH HOUSE AMENDMENT

Senator Wentworth called **SB 1173** 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 1173** as follows:

On page 1, line 24, strike "to oversee" and add "for".

The amendment was read.

Senator Wentworth 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 1173** 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 Wentworth, Chair; Whitmire, Truan, Brown, and Ogden.

SENATE CONCURRENT RESOLUTION 70

The President laid before the Senate the following resolution:

WHEREAS, Senate Bill No. 1672 has passed the Texas Senate and the Texas House of Representatives and is now in the office of the governor; and

WHEREAS, Further consideration of the bill by the senate and the house of representatives is necessary; now, therefore, be it

RESOLVED by the 77th Legislature of the State of Texas, That the governor be hereby requested to return Senate Bill No. 1672 to the house for further consideration; and, be it further

RESOLVED, That the action of the President of the Senate and the Speaker of the House in signing Senate Bill No. 1672 be declared null and void and that the two presiding officers be authorized to remove their signatures from the enrolled bill.

JACKSON

The resolution was read.

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

SENATE BILL 1125 WITH HOUSE AMENDMENT

Senator Armbrister called **SB 1125** 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 1125** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to technical changes to taxes and fees administered by the comptroller of public accounts.

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

SECTION 1. Subsection (k), Section 43.0751, Local Government Code, is amended to read as follows:

(k) A municipality that has annexed all or part of a district for limited purposes under this section may impose a ~~retail~~ sales and use tax within the boundaries of the part of the district that is annexed for limited purposes. Except to the extent it is inconsistent with this section, Chapter 321, Tax Code, governs the imposition, computation, administration, governance, and abolition of the sales and use tax.

SECTION 2. Subsection (b), Section 326.023, Local Government Code, is amended to read as follows:

(b) The petition must:

(1) include a name for the proposed district that describes the location of the district followed by the words "Library District";

(2) describe the boundaries of the proposed district by:

(A) metes and bounds;

(B) lot and block number, if there is a recorded map or plat and survey of the area; or

(C) other sufficient legal description;

(3) include the names of five persons who are willing and qualified to serve as the initial board of trustees of the district if elected at the election to create the district; and

(4) include the rate of the sales and use tax that would be imposed by the board of the proposed district on approval of the district.

SECTION 3. Section 326.029, Local Government Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The order canvassing the results of the election must:

(1) contain a description of the district's boundaries and a map of the district; [and]

(2) state the date of the election; and

(3) state the total number of votes cast for and against the ballot proposition [be filed in the deed records of the county in which the district is located].

(d) The order issued by a commissioners court canvassing the results of the election must be filed in the deed records of the county in which the district is located.

SECTION 4. Subchapter F, Chapter 363, Local Government Code, is amended by adding Section 363.262 to read as follows:

Sec. 363.262. EFFECTIVE DATE OF TAX CHANGE. (a) If less than a majority of the votes cast in a continuation referendum are for the continuation of the district or if a majority of the votes cast in a dissolution referendum are for dissolution of the district, the board shall notify the comptroller in writing of the results of the referendum not later than the 10th day after the date the referendum returns are canvassed.

(b) If the district is to be dissolved as a result of the referendum, the abolition of the local crime control sales and use tax takes effect on the first day of the first calendar quarter that occurs after the expiration of the first complete calendar quarter that occurs after the comptroller receives a notice of the results of the continuation or dissolution referendum.

(c) If the comptroller determines that an effective date provided by Subsection (b) will occur before the comptroller can reasonably take the action required to implement abolition of the tax, the comptroller may extend the effective date until the final day of the succeeding calendar quarter.

SECTION 5. Section 378.004, Local Government Code, as added by Chapter 305, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

Sec. 378.004. MUNICIPAL POWERS. In addition to other powers that a municipality may exercise, a municipality may:

(1) waive or adopt fees related to the construction of buildings in the zone, including fees related to the inspection of buildings and impact fees;

(2) enter into agreements, for a period of not more than 10 years, for the purpose of benefiting the zone, for [~~sales tax~~] refunds [~~or abatements~~] of municipal sales tax on sales made in the zone;

(3) enter into agreements abating municipal property taxes on property in the zone subject to the duration limits of Section 312.204, Tax Code; and

(4) set baseline performance standards, such as the Energy Star Program as developed by the Department of Energy, to encourage the use of alternative building materials that address concerns relating to the environment or to the building costs, maintenance, or energy consumption.

SECTION 6. Section 383.104, Local Government Code, is amended by adding Subsection (c) to read as follows:

(c) The district's sales and use tax is automatically discontinued by operation of law if no tax revenue is collected within the district before the first anniversary of the date the tax took effect. The comptroller shall notify the board and the commissioners court of the county in which the district is located of the discontinuance of the tax. The district may authorize a new sales and use tax by following the procedures provided by this subchapter for imposition of the tax.

SECTION 7. Subsection (a), Section 25.00212, Government Code, is amended to read as follows:

(a) At the end of each state fiscal year the comptroller shall determine the amounts deposited in the judicial fund under Section ~~51.704~~ [51.703] and the amounts paid to the counties under Section 25.00211. If the total amount paid under Section 51.704 by all counties exceeds the total amount paid to counties under Section 25.00211, the state shall remit the excess to the counties proportionately based on the percentage of the total paid by each county.

SECTION 8. Subsection (b), Section 111.0081, Tax Code, is amended to read as follows:

(b) This section does not apply to a determination under Section ~~111.022~~ [~~151.506 of this code~~].

SECTION 9. Subsection (e), Section 111.301, Tax Code, is amended to read as follows:

(e) Application for the refund is to the comptroller. The application must:

- (1) be made on the form prescribed by the comptroller;
- (2) have attached a tax receipt from the assessor and collector of taxes for the school district showing full payment of school district ad valorem taxes on the property for the tax year for which the refund is sought; and
- (3) include sufficient information for the comptroller to determine the portion of the ad valorem taxes paid to a school district by the person for the applicable tax year on the property that the person would not have been required to pay if the school district had entered into a tax abatement agreement concerning the property that included the same terms, including terms governing the portion of the property that is to be exempt from taxation under the agreement, as specified by the [applicable] municipal or county tax abatement agreement on which the refund amount is to be based.

SECTION 10. Section 111.302, Tax Code, is amended by amending Subsections (b) and (c) and adding Subsection (d) to read as follows:

(b) Applications for refund must be filed before August 1 of the year following the tax year for which the person applying has paid ad valorem taxes described by Section 111.301(a). Within 90 [~~60~~] days thereafter, the comptroller shall compute the total amount eligible for refund.

(c) If the total amount of eligible refunds claimed by all persons, as determined under Subsection (b), is less than \$10 million, the amount of a tax refund is equal to the ad valorem taxes paid to a school district by the person for the applicable tax year on the property that the person would not have been required to pay if the school district had entered into a tax abatement agreement covering the property that included the same terms, including terms governing the portion of the property that is to be exempt from taxation under the agreement, as specified by the [applicable] municipal or county tax abatement agreement on which the refund amount is to be based. If the total amount of eligible refunds claimed by all persons, as determined under Subsection (b), is greater than \$10 million, the comptroller shall reduce the amount of each refund as necessary to allow all claimants to share proportionally the \$10 million available. The amount by which a refund is reduced under this subsection may not be included in a claim for a refund in a subsequent year.

(d) If an eligible person has entered into tax abatement agreements with the municipality and the county, and the agreements provided to the comptroller show that the agreements exempt different portions of property value, the refund amount shall be computed based on the greater of the portions exempted.

SECTION 11. Section 111.304, Tax Code, is amended to read as follows:

Sec. 111.304. EVALUATION; ANNUAL REPORT. Not later than [~~December 1, 1999, and~~] December 1 of each [~~subsequent~~] year, the comptroller shall submit an annual report to the legislature. The report:

(1) must document the applications for refunds filed with the comptroller under this subchapter;

(2) must document the refunds paid by the comptroller under this chapter; and

(3) [~~must contain relevant information obtained from the Texas Department of Commerce, including information to demonstrate the relationship between tax refunds under this subchapter and the economy; and~~

[~~(4)~~] may include any other relevant information that the comptroller determines is applicable to this subchapter or to Chapter 312.

SECTION 12. Subsection (a), Section 151.007, Tax Code, is amended to read as follows:

(a) Except as provided by Subsections (c) and (d) [~~of this section~~], "sales price" or "receipts" means the total amount for which a taxable item is sold, leased, or rented, valued in money, without a deduction for the cost of:

- (1) the taxable item sold, leased, or rented;
- (2) the materials used, labor or service employed, interest, losses, or other expenses;
- (3) the transportation or installation of tangible personal property; or
- (4) transportation incident to the performance of a taxable service.

SECTION 13. Section 151.010, Tax Code, is amended to read as follows:

Sec. 151.010. "TAXABLE ITEM." "Taxable item" means tangible personal property and taxable services. Except as otherwise provided by this chapter, the sale or use of a taxable item in electronic form instead of on physical media does not alter the item's tax status.

SECTION 14. Section 151.057, Tax Code, is amended to read as follows:

Sec. 151.057. SERVICES BY EMPLOYEES. The following services are not taxable under this chapter:

(1) a service performed by an employee for his employer in the regular course of business, within the scope of the employee's duties, and for which the employee is paid his regular wages or salary;

(2) a service performed by an employee of a temporary employment service as defined by Section 93.001, Labor Code, [a temporary help service] for an employer to supplement the employer's existing work force on a temporary basis, when the service is normally performed by the employer's own employees, the employer provides all supplies and equipment necessary, and the help is under the direct or general supervision of the employer to whom the help is furnished; or

(3) a service performed by assigned employees of a staff leasing company, either licensed under Chapter 91, Labor Code, or exempt from the licensing requirements of that chapter, for a client company under a written contract that provides for shared employment responsibilities between the staff leasing company and the client company for the assigned employees, most of whom must have been previously employed by the client company. The comptroller shall prescribe by rule the minimum percentage of assigned employees that must have been previously employed by the client company, the minimum time period the assigned employees must have been employed by the client company prior to the commencement of its contract, and such other criteria as the comptroller may deem necessary to properly implement this section.

SECTION 15. Subsection (a), Section 151.155, Tax Code, is amended to read as follows:

(a) Except as provided by Section 151.3181 for property used in manufacturing, if [H] a purchaser certifies in writing to a seller that a taxable item sold, leased, or rented to the purchaser will be used in a manner or for a purpose that qualifies the sale of the item for an exemption from the taxes imposed by this chapter, and if the purchaser then uses the item in some other manner or for some other purpose, the purchaser is liable for the payment of the sales tax on the value of the taxable item for any period during which the item is used in the divergent manner or for the divergent purpose.

SECTION 16. Subsection (b), Section 151.257, Tax Code, is amended to read as follows:

(b) If the security filed by the person is a surety bond, the comptroller shall send a copy of the determination to each surety on the bond and shall demand payment from both the person filing the bond and each surety. A surety's obligation under the bond is not affected by whether the surety has a record of the receipt of a copy of the comptroller's determination notice or payment demand.

SECTION 17. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3021 to read as follows:

Sec. 151.3021. PACKAGING SUPPLIES AND WRAPPING. (a) In this section:

(1) "Laundry or dry cleaner" does not include coin-operated or other self-service garment cleaning facilities.

(2) "Wrapping, packing, and packaging supplies" means hangers, safety pins, inventory tags, staples, boxes, paper wrappers, and plastic bags.

(b) Internal and external wrapping, packing, and packaging supplies are exempted from the taxes imposed by this chapter if sold to a person who is a laundry or dry cleaner for use in wrapping, packing, or packaging an item that has been pressed and dry cleaned or laundered by the person operating as a laundry or dry cleaner in the regular course of business.

SECTION 18. Subsection (a), Section 151.308, Tax Code, is amended to read as follows:

(a) The following are exempted from the taxes imposed by this chapter:

(1) oil as taxed by Chapter 202;

(2) sulphur as taxed by Chapter 203;

(3) motor fuels and special fuels as defined, taxed, or exempted by Chapter 153;

(4) cement as taxed by Chapter 181;

(5) motor vehicles, trailers, and semitrailers as defined, taxed, or exempted by Chapter 152 [~~or 157~~], other than a mobile office as defined by Section 152.001(16);

(6) mixed beverages, ice, or nonalcoholic beverages and the preparation or service of these items if the receipts are taxable by Chapter 183 [~~202, Alcoholic Beverage Code~~];

(7) alcoholic beverages when sold to the holder of a private club registration permit or to the agent or employee of the holder of a private club registration permit if the holder or agent or employee is acting as the agent of the members of the club and if the beverages are to be served on the premises of the club;

(8) oil well service as taxed by Subchapter E, Chapter 191; and

(9) insurance premiums subject to gross premiums taxes.

SECTION 19. Subsection (d), Section 151.310, Tax Code, is amended to read as follows:

(d) If two or more organizations jointly hold a tax-free sale or auction, ~~each~~ neither organization may hold one additional ~~another~~ tax-free sale or auction during the calendar year in which the joint sale or auction is held. The employment of and payment of a reasonable fee to an auctioneer to conduct a tax-free auction does not disqualify an otherwise qualified organization from receiving the exemption provided by Subsection (c) [~~of this section~~].

SECTION 20. Section 151.313, Tax Code, as amended by Chapters 394 and 683, Acts of the 76th Legislature, Regular Session, 1999, is reenacted and amended to read as follows:

Sec. 151.313. HEALTH CARE SUPPLIES. (a) The following items are exempted from the taxes imposed by this chapter:

(1) a drug or medicine, other than insulin, if prescribed or dispensed for a human or animal by a licensed practitioner of the healing arts;

(2) insulin;

(3) subject to Subsection (c), a drug or medicine, without regard to whether it is prescribed or dispensed by a licensed practitioner of the healing arts[~~that is labeled with a national drug code issued by the federal Food and Drug Administration~~];

(4) a hypodermic syringe or needle;

(5) a brace; hearing aid or audio loop; orthopedic, dental, or prosthetic device; ileostomy, colostomy, or ileal bladder appliance; or supplies or replacement parts for the listed items;

(6) a therapeutic appliance, device, and any related supplies specifically designed for those products, if dispensed or prescribed by a licensed practitioner of the healing arts, when those items are purchased and used by an individual for whom the items listed in this subdivision were dispensed or prescribed;

(7) corrective lens and necessary and related supplies, if dispensed or prescribed by an ophthalmologist or optometrist;

(8) specialized printing or signalling equipment used by the deaf for the purpose of enabling the deaf to communicate through the use of an ordinary telephone and all materials, paper, and printing ribbons used in that equipment;

(9) a braille wristwatch, braille writer, braille paper and braille electronic equipment that connects to computer equipment, and the necessary adaptive devices and adaptive computer software;

(10) each of the following items if purchased for use by the blind to enable them to function more independently: a slate and stylus, print enlarger, light probe, magnifier, white cane, talking clock, large print terminal, talking terminal, or harness for guide dog;

(11) hospital beds;

(12) blood glucose monitoring test strips; ~~and~~

(13) an adjustable eating utensil used to facilitate independent eating if purchased for use by a person, including a person who is elderly or physically disabled, has had a stroke, or is a burn victim, who does not have full use or control of the person's hands or arms; and

(14) subject to Subsection (d), a dietary supplement.

(b) Each of the following items is exempted from the tax imposed by this chapter if the item is used by a person who is deaf to enable the person to function more independently:

(1) a light signal and device to adapt items such as telecommunication devices for the deaf (TDDs), telephones, doorbells, and smoke alarms; and

(2) adaptive devices or adaptive software for computers used by persons who are deaf.

(c) A product is a drug or medicine for purposes of this section if:

(1) the product:

(A) is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease, illness, injury, or pain;

(B) is applied to the human body or is a product that a human ingests or inhales;

(C) is not an appliance or device; and

(D) is not food; or

(2) the product is labeled or required to be labeled with a "Drug Facts" panel in accordance with regulations of the federal Food and Drug Administration.

(d) A product is a dietary supplement for purposes of this section if:

(1) the product:

(A) contains one or more vitamins, minerals, herbs or botanicals, amino acids, or substances that supplement the daily dietary intake;

(B) is not represented as food or the sole item of a meal or the diet; and

(C) is labeled "dietary supplement" or "supplement"; or

(2) the product is labeled or required to be labeled with a "Supplement Facts" panel in accordance with regulations of the federal Food and Drug Administration.

SECTION 21. Subsection (a), Section 151.317, Tax Code, is amended to read as follows:

(a) Subject to Subsection (d), gas and electricity are exempted from the taxes imposed by this chapter when sold for:

(1) residential use;

(2) use in powering equipment exempt under Section 151.318 or 151.3185 by a person processing tangible personal property for sale as tangible personal property, other than preparation or storage of food for immediate consumption;

(3) use in lighting, cooling, and heating in the manufacturing area during the actual manufacturing or processing of tangible personal property for sale as tangible personal property, other than preparation or storage of food for immediate consumption;

(4) use directly in exploring for, producing, or transporting, a material extracted from the earth;

(5) use in agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation;

(6) use directly in electrical processes, such as electroplating, electrolysis, and cathodic protection;

(7) use directly in the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property;

(8) use directly in providing, under contracts with or on behalf of the United States government or foreign governments, defense or national security-related electronics, classified intelligence data processing and handling systems, or defense-related platform modifications or upgrades; [or]

(9) a direct or indirect use, consumption, or loss of electricity by an electric utility engaged in the purchase of electricity for resale; or

(10) use in timber operations, including pumping for irrigation of timberland.

SECTION 22. Subsections (a) and (t), Section 151.318, Tax Code, are amended to read as follows:

(a) The following items are exempted from the taxes imposed by this chapter if sold, leased, or rented to, or stored, used, or consumed by a manufacturer:

(1) tangible personal property that will become an ingredient or component part of tangible personal property manufactured, processed, or fabricated for ultimate sale;

(2) tangible personal property directly used or consumed in or during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale if the use or consumption of the property is necessary or essential to the manufacturing, processing, or fabrication operation and directly makes or causes a chemical or physical change to:

(A) the product being manufactured, processed, or fabricated for ultimate sale; or

(B) any intermediate or preliminary product that will become an ingredient or component part of the product being manufactured, processed, or fabricated for ultimate sale;

(3) services performed directly on the product being manufactured prior to its distribution for sale and for the purpose of making the product more marketable;

(4) actuators, steam production equipment and its fuel, in-process flow through tanks, cooling towers, generators, heat exchangers, transformers and the switches, breakers, capacitor banks, regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, and telemetry units that are related to the transformers, electronic control room equipment, computerized control units, pumps, compressors, and hydraulic units, that are used to power, supply, support, or control equipment that qualifies for exemption under Subdivision (2) or (5) or to generate electricity, chilled water, or steam for ultimate sale; transformers located at an electric generating facility that increase the voltage of electricity generated for ultimate sale, the electrical cable that carries the electricity from the electric generating equipment to the step-up transformers, and the switches, breakers, capacitor banks, regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, and telemetry units that are related to the step-up transformers; and transformers that decrease the voltage of electricity generated for ultimate sale and the switches, breakers, capacitor banks, regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, and telemetry units that are related to the step-down transformers;

(5) tangible personal property used or consumed in the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale if the use or consumption of the property is necessary and essential to a pollution control process;

(6) lubricants, chemicals, chemical compounds, gases, or liquids that are used or consumed during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale if their use or consumption is necessary and essential to prevent the decline, failure, lapse, or deterioration of equipment exempted by this section;

(7) gases used on the premises of a manufacturing plant to prevent contamination of raw material or product, or to prevent a fire, explosion, or other hazardous or environmentally damaging situation at any stage in the manufacturing process or in loading or storage of the product or raw material on premises;

(8) tangible personal property used or consumed during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale if the use or consumption of the property is necessary and essential to a quality control process that tests tangible personal property that is being manufactured, processed, or fabricated for ultimate sale;

(9) safety apparel or work clothing that is used during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale if:

(A) the manufacturing process would not be possible without the use of the apparel or clothing; and

(B) the apparel or clothing is not resold to the employee;

(10) tangible personal property used or consumed in the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale if the use or consumption of the property is necessary and essential to comply with federal, state, or local laws or rules that establish requirements related to public health; and

(11) tangible personal property specifically installed to:

(A) reduce water use and wastewater flow volumes from the manufacturing, processing, fabrication, or repair operation;

(B) reuse and recycle wastewater streams generated within the manufacturing, processing, fabrication, or repair operation; or

(C) treat wastewater from another industrial or municipal source for the purpose of replacing existing freshwater sources in the manufacturing, processing, fabrication, or repair operation.

(t) In addition to the other items exempted under this section, pre-press machinery, equipment, and supplies, including computers, cameras, photographic props, film, film developing chemicals, veloxes, plate-making machinery, plate metal, litho negatives, color separation negatives, proofs of color negatives, production art work, and typesetting or composition proofs, that are necessary and essential to and used in connection with the printing process are exempted from the tax imposed by this chapter if they are purchased by a person engaged in:

(1) printing or imprinting tangible personal property for sale; or

(2) producing a publication for the dissemination of news of a general character and of a general interest that is printed on newsprint and distributed to the general public free of charge at a daily, weekly, or other short interval.

SECTION 23. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3181 to read as follows:

Sec. 151.3181. DIVERGENT USE OF PROPERTY USED IN MANUFACTURING. (a) In this section:

(1) "Divergent use" means the use of property in a manner or for a purpose other than the manner or purpose that qualified the sale, lease, rental, use, or other consumption of the property for exemption under Section 151.318.

(2) "Property" means tangible personal property regardless of whether the tangible personal property is permanently affixed to or incorporated into realty after its purchase.

(b) Divergent use of property exempted under Section 151.318 will not result in sales and use tax being due on the property if the divergent use occurs after the fourth anniversary of the date the property is purchased.

(c) Except as provided by Subsection (d), divergent use of property exempted under Section 151.318 that occurs during any month before the fourth anniversary of the date the property is purchased results in sales and use tax being due for that month. The amount of the sales and use tax due for a month is equal to 1/48 of the purchase price of the property multiplied by the percentage of divergent use during that month multiplied by the sales and use tax rate applicable at the time of purchase.

(d) Divergent use of property exempted under Section 151.318 that occurs during a month before the fourth anniversary of the date the property is purchased does not

result in sales and use tax being due for that month if the percentage of divergent use during that month does not exceed five percent of the total use of the property that month.

(e) The amount of divergent use during a month is:

(1) the total time the property operates for a divergent use during a month, measured in hours; or

(2) the total output of the property during divergent use during a month, measured in a manner applicable to that property.

(f) The total use of property is:

(1) the total time the property operates during a month, measured in hours; or

(2) the total output of the property during a month, measured in a manner applicable to that property.

(g) The percentage of divergent use for a month is determined by:

(1) dividing the amount of divergent use determined under Subsection (e)(1) by the amount of total use of the property determined under Subsection (f)(1); or

(2) dividing the amount of divergent use determined under Subsection (e)(2) by the amount of total use of the property determined under Subsection (f)(2).

SECTION 24. Section 151.3185, Tax Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) The sale of a motion picture, video, or audio master by the producer of the master is exempt from the taxes imposed by this chapter.

(f) Tangible personal property that is sold to an entity to which 47 C.F.R. Section 73.624(b) applies is exempt from the taxes imposed by this chapter if the property is necessary for the entity to comply with 47 C.F.R. Section 73.682(d).

SECTION 25. Subsection (b), Section 151.319, Tax Code, is amended to read as follows:

(b) A transaction involving a sale of a newspaper that has been produced, fabricated, or printed to the special order of a customer is exempted from the taxes imposed by this chapter if:

(1) the customer is responsible for gathering substantially all of the information contained in the newspaper and for formulating the design, layout, and format of the newspaper; and

(2) the customer would be entitled to the exemption provided by Section 151.318(t) [~~Subsection (d) of this section~~] if the customer had a printing facility capable of processing and printing the newspaper and printed and processed the newspaper.

SECTION 26. Section 152.002, Tax Code, is amended by adding Subsection (e) to read as follows:

(e) A person who is a motor vehicle owner, is in the business of renting motor vehicles, and holds a permit may deduct the fair market value of a replaced motor vehicle that is titled to another person if:

(1) either person:

(A) holds a beneficial ownership interest in the other person of at least 80 percent; or

(B) acquires all of its vehicles exclusively from franchised dealers whose franchisor shares common ownership with the other person; and

(2) the replaced motor vehicle is offered for sale.

SECTION 27. Section 152.041, Tax Code, is amended by amending Subsections (c) and (d) and adding Subsection (f) to read as follows:

(c) Except as provided by Subsection (f) and Section 152.047, the tax imposed by Section 152.021 ~~[of this code]~~ is due on the 20th working day after the date ~~[day that]~~ the motor vehicle is delivered to the purchaser.

(d) Except as provided by Subsection (f), the ~~[The]~~ tax imposed by Section 152.022 ~~[of this code]~~ is due on the 20th working day after the date ~~[day that]~~ the motor vehicle is brought into this state.

(f) The tax imposed by Section 152.021 or 152.022 on a motor vehicle designed for commercial use is due on the 20th working day after the date the motor vehicle is equipped with a body or other equipment that enables the motor vehicle to be eligible to be registered under the Transportation Code.

SECTION 28. Subsection (a), Section 152.047, Tax Code, is amended to read as follows:

(a) Except as inconsistent with this chapter and rules adopted under this chapter, the seller of a motor vehicle shall report and pay the tax imposed on a seller-financed sale to the comptroller on the seller's receipts from seller-financed sales in the same manner as the sales tax is reported and paid by a retailer under Sections 151.401, 151.402, 151.405, 151.406, 151.409, 151.423, 151.424, and 151.425 ~~[Chapter 151]~~.

SECTION 29. Section 152.091, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) For purposes of this section, a machine is used "primarily for timber operations" if the machine is a self-propelled motor vehicle that is specially adapted to perform a specialized function in the production of timber, including land preparation, planting, maintenance, and gathering of trees commonly grown for commercial timber. The term does not include a self-propelled motor vehicle used to transport timber or timber products.

SECTION 30. Subdivision (25), Section 153.001, Tax Code, is amended to read as follows:

(25) "Supplier" means a person who:

(A) refines, distills, manufactures, produces, or blends for sale or distribution diesel fuel in this state;

(B) imports or exports diesel fuel other than in the fuel supply tanks of motor vehicles;

(C) sells or delivers diesel fuel in bulk quantities to dealers, dyed diesel fuel bonded users, agricultural bonded users, bulk users, aviation fuel dealers, or other suppliers; or

(D) is engaged in the business of selling or delivering diesel fuel in bulk quantities to consumers for nonhighway uses.

SECTION 31. Subsection (i), Section 153.018, Tax Code, is amended to read as follows:

(i) Each terminal or bulk plant shall post a notice in a conspicuous location proximate to the point of receipt of shipping papers that describes the duties of importers and exporters under this section. The comptroller may prescribe the language, type, style, and format of the notice.

SECTION 32. Subsection (c), Section 153.115, Tax Code, is amended to read as follows:

(c) A permitted interstate trucker is entitled to deduct one-half of one percent of the taxable gallons of gasoline on timely payment of the taxes to the state for the expense of recordkeeping, reporting, and remitting the tax.

SECTION 33. Subsection (a), Section 153.117, Tax Code, is amended to read as follows:

(a) A distributor shall keep:

(1) a record showing the number of gallons of:

(A) all gasoline inventories on hand at the first of each month;

(B) all gasoline refined, compounded, or blended;

(C) all gasoline purchased or received, showing the name of the seller and date of each purchase or receipt;

(D) all gasoline sold, distributed, or used, showing the name of the purchaser and the date of the sale or use; and

(E) all gasoline lost by fire, theft, or accident; and

(2) an itemized statement showing by load the number of gallons of all gasoline:

(A) received during the preceding calendar month for export and the location of the loading;

(B) exported from this state by destination state or country; and

(C) imported during the preceding calendar month by [~~destination~~] state or country of origin.

SECTION 34. Subsection (a), Section 153.119, Tax Code, is amended to read as follows:

(a) A person who exports, sells to the federal government, to a public school district in this state, or to a commercial transportation company for exclusive use in providing public school transportation services to a school district under Section 34.008, Education Code, without having added the amount of the tax imposed by this chapter to his selling price, loses by fire, theft, or accident, or uses gasoline for the purpose of operating or propelling a motorboat, tractor used for agricultural purposes, or stationary engine, or for another purpose except in a vehicle operated or intended to be operated on the public highways of this state, and who has paid the tax imposed on gasoline by this chapter either directly or indirectly is, when the person has complied with the invoice and filing provisions of this section and the rules of the comptroller, entitled to reimbursement of the tax paid by him, less [~~a filing fee and~~] any amount allowed distributors under Section 153.105(e) [~~of this code~~]. A public school district that has paid the tax imposed under this chapter on gasoline used by the district or a commercial transportation company that has paid the tax imposed under this chapter on gasoline used by the company exclusively to provide public school transportation services to a school district under Section 34.008, Education Code, is entitled to reimbursement of the amount of the tax paid in the same manner and subject to the same procedures as other exempted users.

SECTION 35. Section 153.122, Tax Code, is amended to read as follows:

Sec. 153.122. GASOLINE TAX REFUND PAYMENT [~~AND FILING FEE~~].

[(a)] After examination of the refund claim, the comptroller before issuing a refund warrant shall deduct from the amount of the refund[:

[(1)] the two percent deducted originally by the distributor on the first sale or distribution of the gasoline[:~~and~~

[(2)] \$1.50 as a filing fee.

[(b)] ~~The filing fees shall be set aside for the use and benefit of the comptroller in the administration and enforcement of this section. All filing fees shall be paid into the state treasury and shall be paid out on vouchers and warrants in the manner prescribed by law.~~

SECTION 36. (a) Section 153.203, Tax Code, is amended to read as follows:

Sec. 153.203. EXCEPTIONS. 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; or

(11) 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.

(b) The change in law made by this section of this Act does not affect taxes imposed before the effective date of this section, and the law in effect before the effective date of this section is continued in effect for purposes of the liability for and collection of those taxes.

SECTION 37. Section 153.205, Tax Code, is amended to read as follows:

Sec. 153.205. STATEMENT FOR PURCHASE OF DIESEL FUEL TAX FREE.

(a) The first sale or use of diesel fuel in this state is taxable, except that sales of dyed diesel fuel, or of undyed diesel fuel if the fuel will be used for an agricultural nonhighway purpose, may be made without collecting the tax if the purchaser furnishes to a permitted supplier a signed statement, including an end user number or agricultural ~~[user]~~ exemption number issued by the comptroller. A person who wants to use a signed statement to purchase dyed diesel fuel must apply to the comptroller for an end user number to be used in conjunction with a signed statement. A person who wants to use a signed statement to purchase dyed or undyed diesel fuel for an agricultural nonhighway purpose must apply to the comptroller for an agricultural exemption number to be used in conjunction with a signed statement. A supplier may not make a tax-free sale of any diesel fuel to a purchaser using a signed statement unless the purchaser has an end user number or agricultural exemption number issued by the comptroller under this section [that stipulates that:

~~[(1) the purchaser does not operate any diesel-powered motor vehicles on the public highway;~~

~~[(2) all of the diesel fuel will be consumed by the purchaser and no diesel fuel purchased on a signed statement will be resold; and~~

~~[(3) none of the diesel fuel purchased in this state will be delivered or permitted by the purchaser to be delivered into fuel supply tanks of motor vehicles].~~

(b) A sale of dyed diesel fuel may be made without collecting the tax if the purchaser furnishes to a permitted supplier a signed statement, including an end user number issued by the comptroller, that stipulates that:

(1) none of the diesel fuel purchased on the signed statement is of a type that may legally be used on the public highway;

(2) all of the dyed diesel fuel purchased on the signed statement will be consumed by the purchaser and will not be resold; and

(3) none of the dyed diesel fuel purchased on the signed statement will be delivered or permitted to be delivered into the fuel supply tank of a motor vehicle operated on the public highways of this state.

(c) A sale of dyed or undyed diesel fuel for an agricultural nonhighway use may be made without collecting the tax if the purchaser furnishes to a permitted supplier a signed statement, including an agricultural exemption number issued by the comptroller, that stipulates that:

(1) all of the dyed and undyed diesel fuel purchased on the signed statement will be used exclusively in agricultural nonhighway equipment;

(2) all of the dyed and undyed diesel fuel purchased on the signed statement will be consumed by the purchaser and will not be resold; and

(3) none of the dyed or undyed diesel fuel purchased on the signed statement will be delivered or permitted to be delivered into the fuel supply tank of a motor vehicle operated on the public highways of this state.

(d) A person may not make a tax-free purchase of any diesel fuel under this section using a signed statement:

(1) for the purchase of more than 3,000 gallons of dyed or undyed diesel fuel in a single transaction or delivery; or

(2) in a calendar month in which the person has previously purchased more than 10,000 gallons of dyed or undyed diesel fuel from all sources.

(e) Any gallons purchased in excess of the limitations prescribed by Subsection (d) constitute a taxable purchase. The purchaser paying the tax on dyed or undyed diesel fuel in excess of the limitations prescribed by Subsection (d) may claim a refund of the tax paid on any dyed or undyed diesel fuel used for nonhighway purposes under Section 153.222.

(f) A supplier may not make a tax-free sale of any diesel fuel under this section to a purchaser using a signed statement:

(1) for the sale of more than 3,000 gallons of dyed or undyed diesel fuel in a single transaction or delivery; or

(2) in a calendar month in which the supplier has previously sold more than 10,000 gallons of dyed or undyed diesel fuel to the purchaser.

(g) Any gallons sold in excess of the limitations prescribed by Subsection (f) constitute a taxable sale. The purchaser paying the tax on dyed or undyed diesel fuel in excess of the limitations prescribed by Subsection (f) may claim a refund of the tax paid on any dyed or undyed diesel fuel used for nonhighway purposes under Section 153.222.

(h) [(e)] The signed statement and end user number or agricultural [user] exemption number from the purchaser as provided by this section relieves the permitted supplier from the burden of proof that the sale of dyed diesel fuel or of undyed diesel fuel for an agricultural nonhighway purpose was not taxable to the purchaser and remains in effect unless:

(1) the statement is revoked in writing by the purchaser or supplier; or

(2) the comptroller notifies the supplier in writing that the purchaser may no longer make tax-free purchases[; or

[(3) the supplier is put on notice by making taxable sales of diesel fuel to a purchaser who has previously submitted a signed statement to this supplier].

(i) [(d) A taxable sale to a person who has previously submitted a signed statement creates a rebuttable presumption that the supplier had reasonable notice that all subsequent sales should have been taxable.

[(e)] A taxable use of any part of the dyed or undyed diesel fuel purchased under a signed statement shall, in addition to any criminal penalty, forfeit the right of the person to purchase dyed or undyed diesel fuel tax free for a period of one year from the date of the offense, and any tax, interest, and penalty found to be due through false or erroneous execution or continuance of a promissory statement by the purchaser, if assessed to the supplier, is a debt of the purchaser to the supplier until paid, and is recoverable at law in the same manner as the purchase price of the fuel. The person may, however, claim a refund of the tax paid on any dyed or undyed diesel fuel used for nonhighway purposes under Section 153.222.

[(f) The statement must be signed by the purchaser or his representative.

[(g) The comptroller's regulations may allow separate operating divisions of corporations to give separate signed statements as if they were different legal entities.

[(h) The comptroller may promulgate necessary forms and rules to administer and enforce this section.

[(i) A permitted supplier may not make a tax-free sale of dyed diesel fuel, or undyed diesel fuel for agricultural purposes, to a purchaser using a signed statement:

[(1) for the sale of more than 3,000 gallons of dyed or undyed diesel fuel in a single transaction; or

[(2) in a calendar month in which the supplier has previously sold more than 10,000 gallons of dyed or undyed diesel fuel to the purchaser.

~~[(j)(1) A sale of dyed diesel fuel, or undyed diesel fuel for agricultural purposes, may be made without collecting tax from a purchaser who operates one or more motor vehicles on the public highway and who furnishes to a permitted supplier a signed statement and end-user number or agricultural user exemption number only as provided in this subsection.~~

~~[(2) The statement must stipulate that all the dyed or undyed diesel fuel will be consumed by the purchaser for purposes other than operating a motor vehicle on the public highway and that no dyed or undyed diesel fuel purchased on a signed statement will be resold or delivered into the fuel supply tanks of a motor vehicle.~~

~~[(3) Diesel fuel which may be sold without collection of tax under this subsection must be of a type that may not be legally used by the purchaser for the operation of a motor vehicle on the public highway under state or federal law.~~

~~[(4) Subsections (a), (c)(3), and (d) of this section do not apply to sales of fuel under this subsection.~~

~~[(k) A person who wants to use a signed statement to purchase dyed diesel fuel must apply to the comptroller for an end-user number to be used in conjunction with a signed statement. A person who wants to use a signed statement to purchase dyed or undyed diesel fuel for agricultural purposes must apply to the comptroller for an agricultural user exemption number to be used in conjunction with a signed statement. A person may not make a tax-free sale of any diesel fuel to a purchaser using a signed statement unless the purchaser has an end-user number or agricultural user exemption number issued by the comptroller under this subsection.]~~

SECTION 38. Subsections (c) and (i), Section 153.206, Tax Code, are amended to read as follows:

(c) A ~~dyed diesel fuel bonded user, agricultural bonded user, or other~~ user, except a diesel tax prepaid user, shall report and pay to the state the tax at the rate imposed on each gallon of diesel fuel delivered by him into the fuel supply tanks of a motor vehicle, unless the tax has been paid to a permitted supplier or a dealer, or, as a diesel tax prepaid user, the tax has been prepaid directly to the comptroller.

(i) A dyed diesel fuel bonded user, an agricultural bonded user, or a permitted interstate trucker is entitled to deduct one-half of one percent of the taxable gallons of diesel fuel on timely payment of the taxes to this state for the expense of recordkeeping, reporting, and remitting the tax.

SECTION 39. The heading to Section 153.217, Tax Code, is amended to read as follows:

Sec. 153.217. LIST OF SUPPLIERS, DYED DIESEL FUEL BONDED USERS, AGRICULTURAL BONDED USERS, AVIATION FUEL DEALERS, AND DIESEL FUEL JOBBERS.

SECTION 40. Subsection (j), Section 153.219, Tax Code, is amended to read as follows:

(j) A supplier shall keep:

(1) an itemized statement showing by load the number of gallons of all diesel fuel received during the preceding calendar month for export;

(2) an itemized statement showing by load the number of gallons of all diesel fuel exported from this state by destination state or country;

(3) an itemized statement showing by load the number of gallons of all diesel fuel imported during the preceding calendar month by [~~destination~~] state or country of origin;

(4) an itemized statement differentiating between dyed and undyed diesel fuel and showing by purchaser, end user number, or agricultural [user] exemption number the number of gallons of dyed and undyed diesel fuel sold tax free to a purchaser using a signed statement in accordance with Section 153.205; and

(5) an itemized statement showing by purchaser and permit number the number of gallons of dyed and undyed diesel fuel sold tax free to dyed diesel fuel bonded users and agricultural bonded users.

SECTION 41. Subsections (a) and (c), Section 153.221, Tax Code, are amended to read as follows:

(a) On or before the 25th day of each month, a supplier, a dealer required to collect the tax under Section 153.206(b), or a dyed diesel fuel bonded user, agricultural bonded user, or other user required to pay the tax under Section 153.206(c) shall file a report of diesel fuel transactions or of diesel fuel delivered by a dyed diesel fuel bonded user, agricultural bonded user, or other user into the fuel tank of a motor vehicle owned or operated by the user and such supplements as the comptroller may require and remit the amount of tax required to be collected or to be paid during the preceding month. A report must be filed on a form or in a manner provided by the comptroller and contain information required by the comptroller, showing complete and detailed information of diesel fuel transactions or use during the preceding month. A supplier required to file a report under this section who has not sold, used, or distributed any diesel fuel during the reporting period shall file with the comptroller the report setting forth the facts or information. The failure of a supplier, dealer, or dyed diesel fuel bonded user, agricultural bonded user, or other user to obtain forms or software from the comptroller is no excuse for the failure to file a report. The report must be executed by the supplier, dealer, or user, or his representative, and is subject to the penalties provided in this chapter.

(c) No report is required to be filed by:

- (1) an aviation fuel dealer;
- (2) a trip permit user;
- (3) a diesel tax prepaid user;
- (4) a person issuing signed statements; or
- (5) [~~a common or contract carrier; or~~
[~~(6)~~] a diesel fuel jobber.

SECTION 42. Subsection (a), Section 153.222, Tax Code, is amended to read as follows:

(a) A dealer or diesel fuel jobber who has paid tax on diesel fuel that has been used or sold for use by the dealer or diesel fuel jobber for any purpose other than propelling a motor vehicle on the public highways of this state or that has been sold to the United States or a public school district in this state for the exclusive use of the purchaser, or to a commercial transportation company for exclusive use in providing public school transportation services to a school district under Section 34.008, Education Code, without adding the amount of the tax to his selling price, and a user who has paid tax on any diesel fuel that has been used by him for a purpose other than propelling a motor vehicle on the public highways, is a public school district and has paid the tax on diesel fuel purchased for its exclusive use, is a commercial transportation company and has paid the tax on diesel fuel used by the company exclusively to provide public school transportation services to a school district under Section 34.008, Education Code, or is a person who has paid tax on diesel fuel used in

a commercial motor vehicle as provided by Section 153.203(10) may file a claim for a refund of taxes paid, less the deduction allowed vendors ~~[and a filing fee]~~.

SECTION 43. Section 153.225, Tax Code, is amended to read as follows:

Sec. 153.225. DIESEL FUEL TAX REFUND PAYMENTS ~~[AND FILING FEE]~~. ~~[(a)]~~ After examination and approval of the refund claim, the comptroller before issuing a refund warrant shall deduct from the amount of the refund payment~~[-~~

~~[(+)]~~ the 2 percent deducted originally by the supplier on the sale or delivery of the diesel fuel~~[-and~~

~~[(2)]~~ \$1.50 as a filing fee.

~~[(b)]~~ The filing fees shall be set aside for the use and benefit of the comptroller in the administration and enforcement of the provisions of this chapter, and for payment of expenses in furnishing the claim forms and other forms. All filing fees shall be paid into the state treasury and shall be paid out on vouchers and warrants in the manner prescribed by law].

SECTION 44. Subsections (c) and (d), Section 153.308, Tax Code, are amended to read as follows:

(c) The tax on one percent of the taxable gallons of liquefied gas sold in this state shall be allocated to the permitted dealer making the sale for the expense of collecting, accounting for, reporting, and timely remitting the taxes collected and keeping the records. The allocation allowance shall be deducted by the permitted dealers in the payment to the state.

(d) The tax of one-half of one percent of the taxable gallons of liquefied gas used in this state by persons permitted as interstate truckers shall be allocated to the interstate trucker making the use of the liquefied gas for the expense of accounting for, reporting, and timely remitting the taxes due.

SECTION 45. Subsection (c), Section 153.311, Tax Code, is amended to read as follows:

(c) A permitted interstate trucker is entitled to a refund of the amount of the Texas liquefied gas tax paid on each gallon of liquefied gas subsequently used outside this state. On verification by the comptroller that the interstate trucker's report was timely filed with all information required, the comptroller ~~[he]~~ shall issue a warrant to the interstate trucker for the amount of the refund less the one percent deducted originally by the permitted dealer making the sale ~~[and a filing fee of \$1.50]~~. Failure to file an interstate trucker report by the 25th of the month following the end of a calendar quarter forfeits the right to a refund.

SECTION 46. Subdivision (13), Section 154.001, Tax Code, is amended to read as follows:

(13) "Permit holder" means a bonded agent, distributor, wholesaler, manufacturer, importer, or retailer required to obtain a permit under Section 154.101.

SECTION 47. Subsections (a), (b), and (h), Section 154.101, Tax Code, are amended to read as follows:

(a) A person may not engage in business as a distributor, wholesaler, bonded agent, manufacturer, importer, or retailer unless the person has applied for and received the applicable permit from the comptroller.

(b) Each distributor, wholesaler, bonded agent, manufacturer, importer, or retailer shall obtain a permit for each place of business owned or operated by the distributor, wholesaler, bonded agent, manufacturer, importer, or retailer.

(h) Permits for engaging in business as a distributor, wholesaler, bonded agent, manufacturer, importer, or retailer shall be governed exclusively by the provisions of this code.

SECTION 48. Subsection (a), Section 154.102, Tax Code, is amended to read as follows:

(a) The comptroller may issue a combination permit for cigarettes and tobacco products to a person who is a distributor, wholesaler, bonded agent, manufacturer, importer, or retailer as defined by this chapter and Chapter 155 for both cigarettes and tobacco products.

SECTION 49. Subsection (a), Section 154.110, Tax Code, is amended to read as follows:

(a) The comptroller shall issue a permit to a distributor, wholesaler, bonded agent, manufacturer, importer, or retailer if the comptroller:

(1) has received an application and fee, if required;

(2) believes that the applicant has complied with Section 154.101; and

(3) determines that issuing the permit will not jeopardize the administration and enforcement of this chapter.

SECTION 50. Subsection (a), Section 154.501, Tax Code, is amended to read as follows:

(a) A person violates this chapter if the person:

(1) is a distributor, wholesaler, manufacturer, importer, bonded agent, manufacturer's representative, or retailer and fails to keep records required by this chapter;

(2) engages in the business of a bonded agent, distributor, wholesaler, manufacturer, importer, or retailer without a valid permit;

(3) is a distributor, wholesaler, manufacturer, importer, bonded agent, or retailer and fails to make a report or makes a false or incomplete report or application required by this chapter to the comptroller; or

(4) is a person affected by this chapter and fails or refuses to abide by or violates a provision of this chapter or a rule adopted by the comptroller under this chapter.

SECTION 51. Subdivision (11), Section 155.001, Tax Code, is amended to read as follows:

(11) "Permit holder" means a bonded agent, distributor, wholesaler, manufacturer, importer, or retailer required to obtain a permit under Section 155.041.

SECTION 52. Subsections (a), (b), and (h), Section 155.041, Tax Code, are amended to read as follows:

(a) A person may not engage in business as a distributor, wholesaler, bonded agent, manufacturer, importer, or retailer unless the person has applied for and received the applicable permit from the comptroller.

(b) Each distributor, wholesaler, bonded agent, manufacturer, importer, or retailer shall obtain a permit for each place of business owned or operated by the distributor, wholesaler, bonded agent, manufacturer, importer, or retailer.

(h) Permits for engaging in business as a distributor, wholesaler, bonded agent, manufacturer, importer, or retailer shall be governed exclusively by the provisions of this code.

SECTION 53. Subsection (a), Section 155.048, Tax Code, is amended to read as follows:

(a) The comptroller shall issue a permit to a distributor, wholesaler, bonded agent, manufacturer, importer, or retailer if the comptroller:

(1) has received an application and fee, if required;

(2) does not reject the application and deny the permit under Section 155.0481; and

(3) determines that issuing the permit will not jeopardize the administration and enforcement of this chapter.

SECTION 54. Section 155.111, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) If more than 50 percent of all untaxed tobacco products received by the distributor in this state are actually sold outside of this state, the distributor shall include in the report only tobacco products that are sold in this state.

SECTION 55. Subsection (a), Section 155.201, Tax Code, is amended to read as follows:

(a) A person violates this chapter if the person:

(1) is a distributor, wholesaler, manufacturer, importer, bonded agent, manufacturer's representative, or retailer and fails to keep records required by this chapter;

(2) engages in the business of a bonded agent, distributor, wholesaler, manufacturer, importer, or retailer without a valid permit;

(3) is a distributor, wholesaler, manufacturer, importer, bonded agent, or retailer and fails to make a report required by this chapter to the comptroller or makes a false or incomplete report or application required by this chapter to the comptroller; or

(4) is a person affected by this chapter and fails or refuses to abide by or violates a provision of this chapter or a rule adopted by the comptroller under this chapter.

SECTION 56. Section 171.076, Tax Code, is amended to read as follows:

Sec. 171.076. EXEMPTION—COOPERATIVE CREDIT ASSOCIATION. A cooperative credit association incorporated under Chapter 55, Agriculture Code, an organization organized under 12 U.S.C. Section 2071, or an agricultural credit association regulated by the Farm Credit Administration is exempted from the franchise tax.

SECTION 57. Section 171.1032, Tax Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except for the gross receipts of a corporation that are subject to the provisions of Section 171.1061, in apportioning taxable earned surplus, the gross receipts of a corporation from its business done in this state is the sum of the corporation's receipts from:

(1) each sale of tangible personal property if the property is delivered or shipped to a buyer in this state regardless of the FOB point or another condition of the sale, and each sale of tangible personal property shipped from this state to a purchaser in another state in which the seller is not subject to any tax on, or measured by, net income, without regard to whether the tax is imposed;

(2) each service performed in this state;

(3) each rental of property situated in this state;

(4) the use of a patent, copyright, trademark, franchise, or license in this state;

(5) each sale of real property located in this state, including royalties from oil, gas, or other mineral interests; ~~and~~

(6) each partnership or joint venture to the extent provided by Subsection (c); and

(7) other business done in this state.

(c) A corporation shall include in its gross receipts computed under Subsection (a) the corporation's share of the gross receipts of each partnership and

joint venture of which the corporation is a part apportioned to this state as though the corporation directly earned the receipts, including receipts from business done with the corporation.

SECTION 58. Section 171.1051, Tax Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except for the gross receipts of a corporation that are subject to the provisions of Section 171.1061, in apportioning taxable earned surplus, the gross receipts of a corporation from its entire business is the sum of the corporation's receipts from:

- (1) each sale of the corporation's tangible personal property;
- (2) each service, rental, or royalty; ~~and~~
- (3) each partnership and joint venture as provided by Subsection (d); and
- (4) other business.

(d) A corporation shall include in its gross receipts computed under Subsection (a) the corporation's share of the gross receipts of each partnership and joint venture of which the corporation is a part.

SECTION 59. Section 171.106, Tax Code, is amended by adding Subsection (h) to read as follows:

(h) A banking corporation shall exclude from the numerator of the bank's apportionment factor interest earned on federal funds and interest earned on securities sold under an agreement to repurchase that are held in this state in a correspondent bank that is domiciled in this state. In this subsection, "correspondent" has the meaning assigned by 12 C.F.R. Section 206.2(c).

SECTION 60. Section 171.109, Tax Code, is amended by adding Subsection (n) to read as follows:

(n) A corporation must use the equity method of accounting when reporting an investment in a partnership or joint venture.

SECTION 61. Section 171.1121, Tax Code, is amended by adding Subsection (e) to read as follows:

(e) A corporation's share of a partnership's gross receipts that is included in the corporation's federal taxable income must be used in computing the corporation's gross receipts under this section. Unless otherwise provided by this chapter, a corporation may not deduct costs incurred from the corporation's share of a partnership's gross receipts. The gross receipts must be apportioned as though the corporation directly earned them.

SECTION 62. Subsection (b), Section 171.260, Tax Code, is amended to read as follows:

(b) The savings and loan commissioner shall appoint a conservator under Subtitle B or C, Title 3, Finance Code, to pay the franchise tax of a savings and loan association ~~corporation~~ that is organized under the laws of this state and that the commissioner certifies as being delinquent in the payment of the association's ~~corporation's~~ franchise tax.

SECTION 63. Subsection (d), Section 171.501, Tax Code, is amended to read as follows:

(d) The amount of a refund under this section is the lesser of \$5,000 or 25 percent of the amount of franchise tax due ~~taxes paid~~ for any one privilege period before any other applicable credits. For purposes of this subsection, the initial and second periods are considered to be the same privilege period.

SECTION 64. Section 171.655, Tax Code, is amended to read as follows:

Sec. 171.655. LIMITATION. The credit claimed for each privilege period may not exceed 50 percent of the amount of [~~net~~] franchise tax due for the privilege period ~~before~~ after any other applicable tax credits.

SECTION 65. Section 171.685, Tax Code, is amended to read as follows:

Sec. 171.685. LIMITATION. The total credits claimed under this subchapter for a privilege period may not exceed 50 percent of the amount of [~~net~~] franchise tax due for the privilege period ~~before~~ after any other applicable tax credits.

SECTION 66. Subsection (b), Section 171.705, Tax Code, is amended to read as follows:

(b) A corporation may not claim a credit in an amount that exceeds 90 percent of the amount of tax due for the report ~~before any other applicable credits~~.

SECTION 67. Section 171.753, Tax Code, is amended to read as follows:

Sec. 171.753. CALCULATION OF CREDIT. A corporation may establish a credit equal to five [~~25~~] percent of the total wages and salaries paid by the corporation for qualifying jobs during the period upon which the tax is based.

SECTION 68. Section 171.754, Tax Code, is amended to read as follows:

Sec. 171.754. LENGTH OF CREDIT. The credit established shall be established on [~~claimed in five equal installments of one-fifth the credit amount over the~~] five consecutive reports beginning with the report based upon the period during which the qualifying jobs were created.

SECTION 69. Section 171.756, Tax Code, is amended to read as follows:

Sec. 171.756. CARRYFORWARD. (a) If a corporation is eligible for a credit [~~from an installment~~] that exceeds the limitations under Section 171.755(a) or (b), the corporation may carry the unused credit forward for not more than five consecutive reports.

(b) A carryforward is considered the remaining portion of a credit [~~an installment~~] that cannot be claimed in the current year because of the tax limitation under Section 171.755. A carryforward is added to the next year's [~~installment of the~~] credit in determining the tax limitation for that year. A credit carryforward from a previous report is considered to be utilized before the current year credit [~~installment~~].

SECTION 70. Section 171.831, Tax Code, is amended to read as follows:

Sec. 171.831. DEFINITION. In this subchapter, "school-age child care" means care provided ~~before~~ or [~~and~~] after school and during the summer and holidays for children who are at least five years of age but younger than 14 years of age.

SECTION 71. Subsection (c), Section 171.834, Tax Code, is amended to read as follows:

(c) A corporation may not claim a credit in an amount that exceeds 50 percent of the amount of [~~net~~] franchise tax due, ~~before~~ after applying any other credits, for the reporting period.

SECTION 72. Chapter 171, Tax Code, is amended by adding Subchapter S to read as follows:

SUBCHAPTER S. CREDITS LIMITATION

Sec. 171.851. LIMITATION. The total credits claimed under this chapter for a report, including the amount of any carryforward credits, may not exceed the amount of franchise tax due for the report.

SECTION 73. Section 211.055, Tax Code, is amended to read as follows:

Sec. 211.055. MAXIMUM TAX. The amount of tax imposed by this chapter may not exceed the amount of the tax imposed under Section 2001, Internal Revenue

~~Code, reduced by the unified credit provided under Section 2010, Internal Revenue Code [taxes imposed by this chapter, when added to the federal tax as finally assessed and determined, may not exceed the amount of the federal tax which, without application of this chapter and the federal credit and the generation-skipping transfer tax credit to which it refers, would otherwise be payable to the federal government under Subtitle B, Chapters 11 and 13, Internal Revenue Code].~~

SECTION 74. Section 321.102, Tax Code, is amended by amending Subsection (g) and adding Subsections (h) and (i) to read as follows:

(g) Subsections (e) and (f) do not apply if and during any period in which a local governmental entity has outstanding indebtedness or obligations that are payable wholly or partly from the sales and use tax revenue of the entity. A municipality may not implement the imposition or increase of the sales and use tax as a result of the circumstances described by Subsection (e) if, as a result of the implementation of that imposition or increase, the combined rate of all sales and use taxes imposed by the municipality, the local governmental entity, and any other political subdivisions having territory in the district would exceed two percent at any location in the municipality.

(h) A transit authority is not a local governmental entity for the purposes of Subsections (e) and (f).

(i) Subsection (g) does not apply to a local governmental entity or political subdivision created under Chapter 326, Local Government Code.

SECTION 75. Subchapter D, Chapter 321, Tax Code, is amended by adding Section 321.312 to read as follows:

Sec. 321.312. RETENTION OF CERTAIN MUNICIPAL SALES TAXES. A municipality that holds a sales and use tax permit issued by the comptroller and that imposes a sales and use tax may retain the portion of the tax that the municipality collects and that constitutes the municipality's own tax. The municipality shall remit to the comptroller all other applicable local sales and use taxes and the state sales and use tax.

SECTION 76. Subchapter D, Chapter 322, Tax Code, is amended by adding Section 322.306 to read as follows:

Sec. 322.306. RETENTION OF CERTAIN SPECIAL PURPOSE DISTRICT SALES TAXES. A taxing entity that holds a sales and use tax permit issued by the comptroller and that imposes a sales and use tax may retain the portion of the tax that the taxing entity collects and that constitutes the entity's own tax. The taxing entity shall remit to the comptroller all other applicable local sales and use taxes and the state sales and use tax.

SECTION 77. Subchapter D, Chapter 323, Tax Code, is amended by adding Section 323.312 to read as follows:

Sec. 323.312. RETENTION OF CERTAIN COUNTY SALES TAXES. A county that holds a sales and use tax permit issued by the comptroller and that imposes a sales and use tax may retain the portion of the tax that the county collects and that constitutes the county's own tax. The county shall remit to the comptroller all other applicable local sales and use taxes and the state sales and use tax.

SECTION 78. Subsection (a), Section 311.045, Health and Safety Code, is amended to read as follows:

(a) A nonprofit hospital or hospital system shall annually satisfy the requirements of this subchapter and of Sections 11.18(d)(1), 151.310(a)(2) and (e),

and 171.063(a)(1), Tax Code, to provide community benefits which include charity care and government-sponsored indigent health care by complying with one or more of the standards set forth in Subsection (b). The hospital or hospital system shall file a statement with the Bureau of State Health Data and Policy Analysis at the department ~~and~~ ~~with~~ the chief appraiser of the local appraisal district ~~and with the comptroller's office~~ no later than the 120th day after the hospital's or hospital system's fiscal year ends, stating which of the standards in Subsection (b) have been satisfied, provided, however, that the first report shall be filed no later than the 120th day after the end of the hospital's or hospital system's fiscal year ending during 1994. For hospitals in a hospital system, the corporate parent may elect to satisfy the charity care requirements of this subchapter for each of the hospitals within the system on a consolidated basis.

SECTION 79. Section 2153.002(1), Occupations Code, is amended to read as follows:

(1) "Coin-operated machine" means any kind of machine or device operated by or with a coin or other United States currency, metal slug, token, electronic card, or check, including a music or skill or pleasure coin-operated machine.

SECTION 80. Section 74.402, Property Code, is amended to read as follows:

Sec. 74.402. NOTICE OF SALE. Before the 21st day preceding the day on which a public sale is held under Section 74.401, the comptroller shall publish notice of the sale in a newspaper of general circulation in Travis County or in the county where the sale is to be held. If the public sale is to be held on the Internet or by an online auction, the comptroller may post the notice on the comptroller's own website before the seventh day preceding the date on which the sale or auction is held.

SECTION 81. Subsection (e), Section 11.011, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) The racetrack where the wager is made is responsible for reporting and remitting the state's share of the pari-mutuel pool. ~~[If intrastate wagering pools are combined between tracks, the track where the race originates is responsible for the state's share of the pari-mutuel pool regardless of whether a shortage or error occurred at the originating track or receiving track.]~~

SECTION 82. Section 1, Article 6550c-1, Revised Statutes, is amended by amending Subdivision (6) and adding Subdivision (7) to read as follows:

(6) "District property" means all property the district owns or leases under a long-term lease.

(7) "System" means all of the commuter rail and intermodal facilities leased or owned by or operated on behalf of a district created under this article.

SECTION 83. Section 9, Article 6550c-1, Revised Statutes, is amended to read as follows:

Sec. 9. SALES AND USE TAXES. (a) A ~~[district shall collect or cause to be collected]~~ sales and use tax is imposed ~~[taxes]~~ on items sold on district property. The sales and use tax shall be imposed ~~[collected]~~ at the rate of the highest combination of ~~[state and]~~ local sales and use taxes imposed at the time of the district's creation in any local governmental jurisdiction which is a member of a district. The ~~[After deducting the state share of sales and use taxes, the]~~ comptroller shall remit to a district the local sales and use tax collected on the district's property. All other local sales and use taxes that would otherwise be imposed on district property are preempted by the imposition of this tax.

(b) The comptroller shall administer, collect, and enforce a tax imposed under this Act. Chapter 321, Tax Code, governs the computation, administration, governance, and use of the tax except as inconsistent with this Act.

(c) The district shall notify the comptroller in writing by United States registered or certified mail of the district's creation and of its intent to impose the sales and use tax under this Act. The district shall provide to the comptroller all information required to implement the tax, including:

(1) an adequate map showing the property boundaries of the district;

(2) a certified copy of the resolution of the district board adopting the tax; and

(3) certified copies of the resolutions of the governing bodies of the municipalities creating the district and of the commissioners courts in the counties in which the municipalities are located.

(d) Not later than the 30th day after the date the comptroller receives the notice, map, and other information, the comptroller shall inform the district whether the comptroller is prepared to administer the tax.

(e) At the same time the district notifies the comptroller under Subsection (c) of this section, the district shall notify each affected local governmental jurisdiction of the district's creation and provide each jurisdiction with an adequate map showing the property boundaries of the district.

(f) Not later than the 30th day after the date the district acquires additional territory, the district shall notify the comptroller and each affected local governmental jurisdiction of the acquisition. The district must include with each notification an adequate map showing the new property boundaries of the district and the date the additional territory was acquired. Not later than the 30th day after the date the comptroller receives the notice under this subsection, the comptroller shall inform the district whether the comptroller is prepared to administer the tax in the additional territory.

(g) A tax imposed under this Act or the repeal of a tax abolished under this Act takes effect on the first day of the first complete calendar quarter that occurs after the expiration of the first complete calendar quarter that occurs after the date the comptroller receives a notice of the action as required by this section.

SECTION 84. The following provisions of the Tax Code are repealed:

(1) Subsections (d) and (e), Section 151.319;

(2) Subsections (c) and (d), Section 171.757; and

(3) Subsection (b), Section 201.052.

SECTION 85. Each change in law made by this Act to the following provisions is a clarification of existing law and does not imply that existing law may be construed as inconsistent with the law as amended by this Act:

(1) Subsection (b), Section 111.0081, Tax Code;

(2) Subsection (a), Section 151.007, Tax Code;

(3) Section 151.010, Tax Code;

(4) Section 151.057, Tax Code;

(5) Subsection (b), Section 151.257, Tax Code;

(6) Subsection (a), Section 151.308, Tax Code;

(7) Subsection (d), Section 151.310, Tax Code;

(8) Section 151.313, Tax Code;

(9) Subsection (a), Section 151.317, Tax Code;

- (10) Subsections (a) and (t), Section 151.318, Tax Code;
- (11) Subsection (e), Section 151.3185, Tax Code;
- (12) Subsection (b), Section 151.319, Tax Code;
- (13) Subsection (a), Section 152.047, Tax Code;
- (14) Subsection (d), Section 152.091, Tax Code;
- (15) Subdivision (25), Section 153.001, Tax Code;
- (16) Subsection (i), Section 153.018, Tax Code;
- (17) Subsection (a), Section 153.117, Tax Code;
- (18) Section 153.205, Tax Code;
- (19) Subsection (c), Section 153.206, Tax Code;
- (20) Subsection (j), Section 153.219, Tax Code;
- (21) Subsections (a) and (c), Section 153.221, Tax Code;
- (22) Subdivision (13), Section 154.001, Tax Code;
- (23) Subsections (a), (b), and (h), Section 154.101, Tax Code;
- (24) Subsection (a), Section 154.102, Tax Code;
- (25) Subsection (a), Section 154.110, Tax Code;
- (26) Subsection (a), Section 154.501, Tax Code;
- (27) Subdivision (11), Section 155.001, Tax Code;
- (28) Subsections (a), (b), and (h), Section 155.041, Tax Code;
- (29) Subsection (a), Section 155.048, Tax Code;
- (30) Subsection (a), Section 155.201, Tax Code;
- (31) Subsections (a) and (c), Section 171.1032, Tax Code;
- (32) Subsections (a) and (d), Section 171.1051, Tax Code;
- (33) Subsection (e), Section 171.1121, Tax Code;
- (34) Subsection (b), Section 171.260, Tax Code;
- (35) Section 171.831, Tax Code; and
- (36) Subchapter S, Chapter 171, Tax Code.

SECTION 86. (a) The changes to Subsection (b), Section 326.023, Local Government Code, made by Section 2 of this Act apply only to a petition filed with a commissioners court on or after the effective date of that section. A petition filed before that date is governed by the law in effect on the date the petition is filed, and that law is continued in effect for that purpose.

(b) The changes to Section 326.029, Local Government Code, made by Section 3 of this Act apply only to an order issued on or after the effective date of that section. An order issued before that date is governed by the law in effect on the date the order is issued, and that law is continued in effect for that purpose.

SECTION 87. The comptroller of public accounts may adopt rules and take other actions before October 1, 2001, as the comptroller considers necessary or advisable to prepare for this Act to take effect.

SECTION 88. (a) Except as otherwise provided by this section, this Act takes effect September 1, 2001.

(b) Sections 12, 13, 14, 15, 17 through 26, 29 through 55, 75 through 77, and 81 of this Act, and Subdivisions (1) and (3), Section 84, of this Act, take effect October 1, 2001.

(c) Sections 57 through 72 of this Act and Subdivision (2), Section 84, of this Act take effect January 1, 2002, and apply to a report originally due on or after that date.

The amendment was read.

On motion of Senator Armbrister, the Senate concurred in the House amendment to **SB 1125** by a viva voce vote.

GUEST PRESENTED

The President acknowledged the presence of Comptroller Carole Keeton Rylander.

The Senate welcomed Comptroller Rylander.

(Senator Moncrief in Chair)

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 82, SB 108, SB 158, SB 177, SB 218, SB 272, SB 314, SB 326, SB 350, SB 352, SB 355, SB 367, SB 377, SB 430, SB 437, SB 518, SB 643, SB 684, SB 697, SB 766, SB 779, SB 846, SB 961, SB 986, SB 1205, SB 1371, SJR 16, SJR 37.

(Senator Armbrister in Chair)

GUEST PRESENTED

Senator Carona was recognized and introduced to the Senate Ashley Blanton, eighth-grade student from Bussey Middle School in Garland who is a Texas Tomorrow Fund Poster Contest runner-up.

The Senate welcomed Ashley.

GUEST PRESENTED

Senator Lucio was recognized and introduced to the Senate Sabrina Fox, Texas Tomorrow Fund Poster Contest runner-up and student at R. L. Martin Elementary School in Brownsville.

The Senate welcomed Sabrina.

GUESTS PRESENTED

Senator Harris was recognized and introduced to the Senate Stefan Rodriguez, Texas Tomorrow Fund Poster Contest grand prize winner, accompanied by his parents Michael and Leslie Rodriguez.

The Senate welcomed Stefan and his parents.

GUEST PRESENTED

Senator Shapleigh was recognized and introduced to the Senate Emmanuel Falcón, Texas Tomorrow Fund Poster Contest runner-up and student at Pasodale Elementary School in El Paso.

The Senate welcomed Emmanuel.

PHYSICIAN OF THE DAY

Senator Ogden was recognized and presented Dr. Nancy Dickey of Bryan as the Physician of the Day.

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

(President in Chair)

SENATE RESOLUTION 1183

Senator Brown offered the following resolution:

WHEREAS, The Senate of the State of Texas takes pleasure in recognizing Bertha A. Lucio Caballero on her selection as one of the winners of the Newspapers in Education Teacher of the Year Award; and

WHEREAS, Nominated by the *Brownsville Herald* for this national award, Bertha Caballero was also a recipient of the award for the 1997-1998 school year; and

WHEREAS, A cooperative venture between schools and newspapers, Newspapers in Education promotes the use of the newspaper as a main resource for teaching concepts and skills in all subject areas and at all grade levels; and

WHEREAS, A worldwide program, Newspapers in Education began more than 60 years ago when a group of newspapers decided to train teachers to use the newspaper as a tool to teach a state's mandated standards; and

WHEREAS, An exceptionally resourceful and dedicated teacher, Bertha Caballero is an enthusiastic educator with a warm sense of humor who has distinguished herself in her profession; and

WHEREAS, Her students have greatly benefitted from her skillful teaching methods, her sincere concern for the individual, and her wise counsel and encouragement; and

WHEREAS, A true academic leader, Bertha Caballero has worked diligently to further the manner in which students can improve their reading and critical thinking skills; she is to be honored for her dedication; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby commend Bertha A. Lucio Caballero on her selection as winner of a Newspapers in Education Teacher of the Year Award; she is to be lauded for her contributions to the educational system of Texas; and, be it further

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

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

GUESTS PRESENTED

Senator Brown was recognized and introduced to the Senate Bertha A. Lucio Caballero, accompanied by her niece, Lauren Lucio Garza, and her nephew, Albert Lee Lucio Rodriguez.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Shapiro was recognized and introduced to the Senate Girl Scout Troop 1045 of Dallas and Highland Park.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Ellis was recognized and introduced to the Senate students from Wesley Elementary School in Houston who all scored 100 percent on the Texas Assessment of Academic Skills test.

The Senate welcomed its guests.

SENATE RESOLUTION 386

Senator Bernsen offered the following resolution:

WHEREAS, The Senate of the State of Texas takes great pride in recognizing the Cut-N-Shoot Harley Owner's Group Chapter of Cut and Shoot, Texas; and

WHEREAS, Founded in 1990 in Cut and Shoot, Montgomery County, Texas, the Harley Owner's Group (HOG), has close to 1,000 active members, and 20 to 25 percent of the group are female bikers; and

WHEREAS, The stated purposes of the club are to have fun and ride Harleys, to promote and encourage safe group riding habits, and to perform services for local charitable causes; and

WHEREAS, The dealership which sponsors this group is Texan Harley-Davidson, owned by David Moore; he has two locations, one in Conroe and the other in The Woodlands, and is an active member of the club; and

WHEREAS, The membership includes Harley-Davidson riders from all across Southeast Texas, and the group is famous for its motto, "The most active chapter in all of Hogdom, and proud of it"; and

WHEREAS, Annually, the Cut-N-Shoot Harley Owner's Group chapter has quite a successful Christmas "toy run" which gathers toys, clothing, cash, and food for the Montgomery County Child Protective Services; the Montgomery County Food Bank, and the Montgomery County Battered Women's Shelter have also benefitted from generous donations by the Cut-N-Shoot chapter; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby congratulate and commend the members of the Cut-N-Shoot Harley Owner's Group Chapter of Cut and Shoot for their outstanding contributions to those in need in their community; and, be it further

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

The resolution was again read.

The resolution was previously adopted on Thursday, March 1, 2001.

GUESTS PRESENTED

Senator Bernsen was recognized and introduced to the Senate members of the Cut-N-Shoot Harley Owner's Group (HOG); President Neil Nofsinger; and officers Rock Barras, David Forkner, and Paula Leiker.

The Senate welcomed its guests.

SENATE CONCURRENT RESOLUTION 71

The President laid before the Senate the following resolution:

WHEREAS, The members of both chambers of the 77th Texas Legislature are truly grateful to the State Preservation Board housekeeping staff for its tireless efforts in keeping the Capitol in pristine condition; and

WHEREAS, Amid the hustle and bustle of daily legislative affairs, the high standards of caretaking upheld consistently shine through as this nationally recognized landmark remains immaculate thanks to the quiet but arduous efforts of this dedicated staff; and

WHEREAS, The custodians of the Capitol Building include: Arleena "Pat" Barrett, Gilbert Cadena, Maria Carranza, Charles Cunningham, Sylvia Daniels, Marisol Esquivel, Barbara Gonzales, Tomas Gonzales, Seberina Hernandez, Chris Johle, James Johnson, Debra Jones, Maria Lopez, Diane Megallanez, Bob Martinez, Rodrigo Oroasco, Ana Reyes, Janie Saldana, Flora Torres, Quang Tran, and Cathy Young; and

WHEREAS, It is most appropriate at this time to commend these hardworking individuals for the exceptional service they provide in maintaining the beauty and cleanliness of this majestic building; now, therefore, be it

RESOLVED, That the 77th Legislature of the State of Texas hereby honor the members of the State Preservation Board housekeeping staff and extend to them heartfelt appreciation for their invaluable support; and, be it further

RESOLVED, That an official copy of this resolution be prepared for the members of the housekeeping staff as an expression of high regard by the Texas House of Representatives and Senate.

CAIN

The resolution was read.

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

GUESTS PRESENTED

Senator Cain was recognized and introduced to the Senate members of the State Preservation Board housekeeping staff.

The Senate welcomed its guests.

GUEST PRESENTED

Senator Jackson was recognized and introduced to the Senate Speaker of the Mississippi House of Representatives Tim Ford.

The Senate welcomed Speaker Ford.

CONFERENCE COMMITTEE ON HOUSE BILL 154

Senator Gallegos 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 154** 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 154** 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 Gallegos, Chair; Moncrief, Bernsen, Zaffirini, and Carona.

**VOTE RECONSIDERED ON
SENATE BILL 1057**

On motion of Senator Ellis and by unanimous consent, the vote by which the Senate concurred in the House amendment to **SB 1057** was reconsidered:

SB 1057, Relating to the administration of the TEXAS grant program and to the dissemination of student financial aid information.

Question—Shall the Senate concur in the House amendment to **SB 1057**?

Senator Ellis then 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 1057** 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 Ellis, Chair; Bivins, Cain, Shapiro, and Zaffirini.

SENATE RESOLUTION 1200

Senator Zaffirini offered the following resolution:

WHEREAS, The Texas Senate takes pride in recognizing the fifth annual Laredo March for Jesus Day on June 2, 2001; and

WHEREAS, In 100 nations around the world and in 500 cities throughout the United States, more than 10 million persons of all denominations and ethnic groups will march for Jesus; and

WHEREAS, Joining Christians across the nation in the symbolic march will be citizens of Laredo who proudly follow the teachings of Jesus Christ; they will honor the life He lived and the gifts He gave; and

WHEREAS, This year's theme for the march is, "Walking With Our Next Generation," which will emphasize children and youth; the march will include special prayers, activities for the children, and a youth rally following the march; and

WHEREAS, An important part of the spiritual foundation of Texas, Christianity has contributed hope and faith to the lives of the state's citizens, and this important march reminds Texans of that heritage; and

WHEREAS, The March for Jesus serves to remind the public of its blessings and underscores the unanimity of millions of people around the world; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby recognize June 2, 2001, as March for Jesus Day; and, be it further

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

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

CONFERENCE COMMITTEE ON HOUSE BILL 2164

Senator Cain 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 2164** 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 2164** 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 Cain, Chair; Moncrief, Zaffirini, Gallegos, and Harris.

CONFERENCE COMMITTEE ON HOUSE BILL 2809

Senator Cain 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 2809** 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 2809** 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 Cain, Chair; Brown, Harris, Armbrister, and Shapiro.

SENATE BILL 248 WITH HOUSE AMENDMENTS

Senator Carona called **SB 248** 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 248** by striking subsection (b) on page 1, lines 14-17 of the Senate engrossment, and inserting the following:

(b) For purposes of this section, a motor vehicle is presumed to be used primarily for activities that do not involve the production of income if 50 percent or more of the miles it is driven in a year are for non-income producing purposes.

Committee Amendment No. 2

Amend **SB 248** by adding the following language after subsection (h) on page 3, Senate engrossment:

(i) In addition to the requirements of subsections (c) and (d), the comptroller by rule shall prescribe a property report form to be completed by the lessor describing the leased motor vehicles which the lessor owns. The property report form shall require the lessor to list each leased vehicle the lessor owns on January 1, to provide the year,

make, model and vehicle identification number of each leased vehicle, and to provide the name of the lessee, the address at which the vehicle is kept, and an indication of whether the lessee has designated the vehicle as not held for the production and not used for the production of income.

(j) The lessor shall provide the chief appraiser with the completed property report form adopted by the comptroller in the manner provided by Subchapter B, Chapter 22, of the code.

Floor Amendment No. 3

Amend **SB 248** as follows:

(1) In SECTION 1 of the bill, at the end of added Subsection (f), Section 11.252, Tax Code (Committee Printing, page 2, line 25), add:

"This subsection does not apply to a municipality in which a majority of the qualified voters voting at the constitutional amendment election held November 2, 1999, voted in favor of Senate Joint Resolution No. 21, 76th Legislature, Regular Session, 1999. A municipality in which a majority of the qualified voters voting at that election voted in favor of S.J.R. No. 21 may not provide for the taxation of leased motor vehicles under this subsection."

(2) In SECTION 1 of the bill, strike added Subsection (g), Section 11.252, Tax Code (Committee Printing, page 2, line 26-page 3, line 1), and reletter subsequent subsections accordingly.

The amendments were read.

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

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 248** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Carona, Chair; Ellis, Ogden, Lindsay, and Fraser.

SENATE BILL 309 WITH HOUSE AMENDMENTS

Senator Harris called **SB 309** 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 309** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the application of the sunset review process to certain governmental entities.

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

ARTICLE 1. ENTITIES GIVEN 2005 SUNSET DATE

SECTION 1.01. STATE BOARD OF BARBER EXAMINERS.

Section 1601.004, Occupations Code, is amended to read as follows:

Sec. 1601.004. APPLICATION OF SUNSET ACT. The State Board of Barber Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2005 [~~2003~~].

SECTION 1.02. TEXAS COSMETOLOGY COMMISSION. Section 1602.004, Occupations Code, is amended to read as follows:

Sec. 1602.004. APPLICATION OF SUNSET ACT. The Texas Cosmetology Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2005 [~~2003~~].

SECTION 1.03. TEXAS VETERANS COMMISSION. Subsection (a), Section 434.002, Government Code, is amended to read as follows:

(a) The Texas Veterans Commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2005 [~~2003~~].

SECTION 1.04. VETERANS' LAND BOARD. Section 161.0111, Natural Resources Code, is amended to read as follows:

Sec. 161.0111. SUNSET PROVISION. The Veterans' Land Board is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The board shall be reviewed during the period in which state agencies abolished in 2005 [~~2003~~] and every 12th year after 2005 [~~2003~~] are reviewed.

ARTICLE 2. ENTITIES GIVEN 2007 SUNSET DATE

SECTION 2.01. TEXAS INCENTIVE AND PRODUCTIVITY COMMISSION.

Section 2108.007, Government Code, is amended to read as follows:

Sec. 2108.007. APPLICATION OF SUNSET ACT. The Texas Incentive and Productivity Commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2007 [~~2003~~].

SECTION 2.02. RISK MANAGEMENT BOARD. Subsection (f), Section 412.021, Labor Code, is amended to read as follows:

(f) The risk management board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this section expires September 1, 2007 [~~2009~~].

SECTION 2.03. TEXAS REAL ESTATE COMMISSION. Subsection (n), Section 5, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(n) The Texas Real Estate Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this Act expires September 1, 2007 [~~2003~~].

SECTION 2.04. TEXAS STRUCTURAL PEST CONTROL BOARD.

Subsection (e), Section 3, Texas Structural Pest Control Act (Article 135b-6, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) The Texas Structural Pest Control Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this Act expires September 1, 2007 [~~2003~~].

ARTICLE 3. ENTITIES GIVEN 2009 SUNSET DATE

SECTION 3.01. POLYGRAPH EXAMINERS BOARD. Section 1703.005, Occupations Code, is amended to read as follows:

Sec. 1703.005. APPLICATION OF SUNSET ACT. The Polygraph Examiners Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2009 [~~2003~~].

ARTICLE 4. ENTITIES GIVEN 2011 SUNSET DATE

SECTION 4.01. TEXAS DEPARTMENT OF HUMAN SERVICES. Section 21.002, Human Resources Code, is amended to read as follows:

Sec. 21.002. SUNSET PROVISION. The Texas Department of Human Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this title expires September 1, 2011 [~~2003~~], except that Chapter 40 expires as provided by Section 40.003.

ARTICLE 5. SPECIAL PURPOSE REVIEW

SECTION 5.01. TEXAS DEPARTMENT OF HUMAN SERVICES. Chapter 21, Human Resources Code, is amended by adding Section 21.0021 to read as follows:

Sec. 21.0021. SPECIAL PURPOSE SUNSET REVIEW. (a) During the period in which the Sunset Advisory Commission performs its duties under Chapter 325, Government Code, in preparing for a report to the 78th Legislature, the commission shall perform a special purpose review of the department. In the review, the commission is limited to reviewing the appropriateness of the recommendations made by the commission to the 76th Legislature regarding the department. In the commission's report to the 78th Legislature, the commission may include any of those prior recommendations the commission considers appropriate.

(b) The department shall cooperate with the commission in the review and shall provide to the commission any information the commission considers necessary for the review.

(c) This section expires September 1, 2003.

ARTICLE 6. ENTITIES REMOVED FROM SUNSET REVIEW

SECTION 6.01. The following laws are repealed:

(1) Section 30.026, Education Code (governing board of the Texas School for the Blind and Visually Impaired);

(2) Section 30.058, Education Code (governing board of the Texas School for the Deaf);

(3) Section 86.511, Education Code (Real Estate Research Center);

(4) Section 465.002, Government Code (Texas National Research Laboratory Commission);

(5) Section 752.025, Government Code (Governor's Advisory Committee on Immigration and Refugees);

(6) Section 451.453, Transportation Code (Capital Metropolitan Transportation Authority, Corpus Christi Regional Transit Authority, and Harris County Metropolitan Rapid Transit Authority); and

(7) Section 452.453, Transportation Code (Dallas Area Rapid Transit Authority).

ARTICLE 7. EFFECTIVE DATE

SECTION 7.01. This Act takes effect September 1, 2001.

Floor Amendment No. 1

Amend **CSSB 309** (House committee printing) in ARTICLE 5 of the bill by adding SECTION 5.02 to read as follows:

SECTION 5.02. TEXAS DEPARTMENT OF HEALTH. Chapter 11, Health and Safety Code, is amended by adding Section 11.0031 to read as follows:

Sec. 11.0031. SPECIAL PURPOSE SUNSET REVIEW. (a) During the period in which the Sunset Advisory Commission performs its duties under Chapter 325, Government Code, in preparing for a report to the 78th Legislature, the commission shall perform a special purpose review of the department. For that purpose, the commission shall review:

(1) the extent to which the department has implemented laws enacted by the 76th Legislature in continuing the department under Chapter 325, Government Code;

(2) the extent to which the department has implemented the recommendations made by the commission to the 76th Legislature regarding the department that did not require statutory change;

(3) the extent to which the department has implemented the recommendations made by the state auditor in each audit report relating to the department issued after January 1, 1999, and before September 1, 2002; and

(4) the extent to which the department implements the recommendations of consultants employed by the department after January 1, 2001.

(b) In the commission's report to the 78th Legislature, the commission may include any recommendation the commission considers appropriate.

(c) The department shall cooperate with the commission in the review and shall provide to the commission any information the commission considers necessary for the review.

(d) This section expires September 1, 2003.

Floor Amendment No. 2

Amend **CSSB 309** in ARTICLE 1 of the bill by adding an appropriately numbered new SECTION to that ARTICLE to read as follows:

SECTION _____. Section 367.003(a), Health and Safety Code, is amended to read as follows:

(a) The council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this chapter expires September 1, 2005 [2001].

Floor Amendment No. 1 on Third Reading

Amend **CSSB 309** (House Committee Report) on third reading by adding the following:

SECTION _____. Amend Sec. 251.005, Occupations Code, to read as follows:

Sec. 251.005. APPLICATION OF SUNSET ACT. The State Board of Dental Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2003 [2005].

Floor Amendment No. 2 on Third Reading

Amend **CSSB 309** on third reading by adding a new article and section to the bill, to be numbered appropriately, to read as follows and by renumbering subsequent articles and sections of the bill appropriately:

ARTICLE _____. ENTITIES GIVEN 2003 SUNSET DATE.

SECTION _____. (a) TEXAS DEPARTMENT OF ECONOMIC DEVELOPMENT. Section 481.003, Government Code, is amended to read as follows:

Sec. 481.003. SUNSET PROVISION. The Texas Department of Economic Development is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2003 [~~2004~~].

(b) This section takes effect only if neither S.B. No. 321 nor H.B. No. 3452, 77th Legislature, Regular Session, 2001, becomes law. If either of those bills becomes law, this section has no effect.

The amendments were read.

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

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 309** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chair; Lucio, Sibley, Staples, and Armbrister.

SENATE BILL 311 WITH HOUSE AMENDMENTS

Senator Zaffirini called **SB 311** 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 311** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the abolition of the General Services Commission; to the transfer of its functions to a newly created Texas Procurement Commission, the Department of Information Resources, and a newly created Texas Building Commission; and to the operations of certain other state agencies having functions transferred from or associated with the commission, including the telecommunications planning and oversight council, the attorney general, and the State Cemetery Committee.

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

ARTICLE 1. ABOLITION OF GENERAL SERVICES COMMISSION;
TRANSFER OF POWERS AND DUTIES

SECTION 1.01. Subchapter A, Chapter 552, Government Code, is amended by adding Section 552.0095 to read as follows:

Sec. 552.0095. TRANSFER OF POWERS AND DUTIES TO ATTORNEY GENERAL. The powers and duties of the General Services Commission under this chapter are transferred to the Texas Procurement Commission.

SECTION 1.02. Section 1232.003(4), Government Code, is amended to read as follows:

(4) "Commission" means the Texas Building [~~General—Services~~] Commission.

SECTION 1.03. Section 2151.002(1), Government Code, is amended to read as follows:

(1) "Commission" means the Texas Building [~~General—Services~~] Commission, the Department of Information Resources, or the Texas Procurement Commission, as appropriate.

SECTION 1.04. Section 2151.003, Government Code, is amended to read as follows:

Sec. 2151.003. REFERENCE. A statutory reference to the State Board of Control or the State Purchasing and General Services Commission means the Texas Building [~~General Services~~] Commission, the Department of Information Resources, or the Texas Procurement Commission, as appropriate.

SECTION 1.05. Chapter 2151, Government Code, is amended by adding Sections 2151.004, 2151.005, and 2151.006 to read as follows:

Sec. 2151.004. TRANSFER OF POWERS AND DUTIES TO TEXAS BUILDING COMMISSION. (a) The powers and duties of the General Services Commission under Chapters 2165-2167, Chapter 2176, or other law relating to state buildings, grounds, or property or related services, other than powers and duties relating to the purchase of goods or to the disposition of surplus or salvage property, are transferred to the Texas Building Commission.

(b) A reference in law to the General Services Commission that relates to the powers and duties of the General Services Commission under Chapters 2165-2167, Chapter 2176, or other law relating to state buildings, grounds, or property or related services, other than powers and duties relating to the purchase of goods or to the disposition of surplus or salvage property, is a reference to the Texas Building Commission.

Sec. 2151.005. TRANSFER OF POWERS AND DUTIES TO TEXAS PROCUREMENT COMMISSION. (a) The powers and duties of the General Services Commission under Chapter 552 or under Chapters 2155-2158, 2161, 2171, 2172, 2175, and 2177, or other law relating to the purchase of goods or services for the state or to the disposition of surplus or salvage property or to other miscellaneous powers and duties, other than services relating to the construction, repair, acquisition, maintenance, or charge and control of real property, are transferred to the Texas Procurement Commission.

(b) A reference in law to the General Services Commission that relates to the powers and duties of the General Services Commission under Chapter 552 or under

Chapters 2155-2158, 2161, 2171, 2172, 2175, and 2177, or other law relating to the purchase of goods or services for the state or to the disposition of surplus or salvage property or to other miscellaneous powers and duties, other than services relating to the construction, repair, acquisition, maintenance, or charge and control of real property, is a reference to the Texas Procurement Commission.

Sec. 2151.006. TRANSFER OF POWERS AND DUTIES TO DEPARTMENT OF INFORMATION RESOURCES. (a) The powers and duties of the General Services Commission under Chapter 2170 or other law relating to providing telecommunications services for state government are transferred to the Department of Information Resources.

(b) A reference in law to the General Services Commission that relates to the powers and duties of the General Services Commission under Chapter 2170 or other law relating to providing telecommunications services for state government is a reference to the Department of Information Resources.

SECTION 1.06. The heading of Chapter 2152, Government Code, is amended to read as follows:

CHAPTER 2152. TEXAS PROCUREMENT
[GENERAL SERVICES] COMMISSION

SECTION 1.07. Subchapter A, Chapter 2152, Government Code, is amended to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2152.001. COMMISSION; DEFINITION. (a) The Texas Procurement [General Services] Commission is an agency of the state.

(b) In this chapter, "commission" means the Texas Procurement Commission.

Sec. 2152.002. SUNSET PROVISION. The Texas Procurement [General Services] Commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter and Chapters 2155-2158, 2161, 2171, 2172, 2175, and 2177 expire [subtitle expires] September 1, 2013 [2001].

Sec. 2152.003. AUTHORITY TO ADOPT RULES. The commission may adopt rules to efficiently and effectively accomplish its functions [administer this subtitle].

Sec. 2152.004. POWERS AND DUTIES. The commission shall perform the powers and duties assigned to the commission under Chapters 552, 2155-2158, 2161, 2171, 2172, 2175, 2177, or other law.

SECTION 1.08. Section 2152.051, Government Code, is amended to read as follows:

Sec. 2152.051. COMPOSITION OF COMMISSION. The commission is composed of five [six] representatives of the public appointed by the governor with the advice and consent of the senate.

SECTION 1.09. Subsections (b) and (c), Section 2152.054, Government Code, are amended to read as follows:

(b) An officer, employee, or paid consultant of a Texas trade association of business entities that contracts with the state may not:

(1) serve as a commission member; or

(2) be employed as a commission employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments

[who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule].

(c) An individual who is the spouse of an officer, manager, or paid consultant of a Texas trade association of business entities that contracts with the state may not:

(1) serve as a commission member; or

(2) be employed as a commission employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments [who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule].

SECTION 1.10. Subsection (c), Section 2152.056, Government Code, is amended to read as follows:

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 1.11. Section 2152.057, Government Code, is amended to read as follows:

Sec. 2152.057. TERMS. Commission members serve staggered six-year terms with one or two members' terms expiring January 31 of each odd-numbered year.

SECTION 1.12. Subsection (c), Section 2152.058, Government Code, is amended to read as follows:

(c) Three [Four] members of the commission constitute a quorum.

SECTION 1.13. Subchapter B, Chapter 2152, Government Code, is amended by adding Section 2152.0581 to read as follows:

Sec. 2152.0581. TRAINING FOR COMMISSION MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the commission;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

(4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the commission;

(6) the results of the most recent formal audit of the commission;

(7) the requirements of:

(A) the open meetings law, Chapter 551;

(B) the public information law, Chapter 552;

(C) the administrative procedure law, Chapter 2001; and

(D) other laws relating to public officials, including conflict-of-interest

laws; and

(8) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 1.14. Section 2152.060, Government Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) The commission shall maintain a ~~[keep-an-information]~~ file on ~~[about]~~ each ~~written~~ complaint filed with the commission ~~[that the commission has authority to resolve]~~. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the commission;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and

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

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

SECTION 1.15. Subchapter C, Chapter 2152, Government Code, is amended by adding Section 2152.110 to read as follows:

Sec. 2152.110. STATE EMPLOYEE INCENTIVE PROGRAM. The executive director or the executive director's designee shall provide to commission employees information and training on the benefits and methods of participation in the state employee incentive program under Subchapter B, Chapter 2108.

SECTION 1.16. Subtitle D, Title 10, Government Code, is amended by adding Chapter 2153 to read as follows:

CHAPTER 2153. TEXAS BUILDING COMMISSION

Sec. 2153.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Texas Building Commission.
- (2) "Division" means the Texas building division of the State Preservation Board.

Sec. 2153.002. TEXAS BUILDING DIVISION; ADMINISTRATION. (a) A Texas building division is established within the State Preservation Board to administer the duties of the Texas Building Commission under Chapters 2165-2167, Chapter 2176, or other law relating to state buildings, grounds, or property or related services.

(b) The division is administratively attached to the State Preservation Board and the State Preservation Board shall provide the facilities for the division, but the division shall be independent of the State Preservation Board's direction.

(c) The commission is the governing body of the division.

(d) The commission shall develop policies and procedures to accomplish the division's functions.

Sec. 2153.003. SUNSET PROVISION. The Texas Building Commission and the Texas building division of the State Preservation Board are subject to Chapter 325

(Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and Chapters 2165-2167 and Chapter 2176 expire September 1, 2007.

Sec. 2153.004. AUTHORITY TO ADOPT RULES. The commission may adopt rules to efficiently and effectively accomplish its functions.

Sec. 2153.005. EXECUTIVE DIRECTOR. (a) The executive director of the State Preservation Board is the executive director of the division.

(b) The executive director of the division performs the administrative functions of the commission under the commission's supervision and shall report periodically to the commission on those functions.

(c) The executive director shall provide staff to the division and assign duties to the staff to accomplish the commission's functions.

Sec. 2153.006. COMPOSITION OF COMMISSION. (a) The commission is composed of the governor, the lieutenant governor, and one member appointed by the governor from a list of nominees submitted by the speaker of the house of representatives.

(b) The governor may reject one or more of the nominees on a list submitted by the speaker of the house of representatives and request a new list of different nominees.

Sec. 2153.007. TERMS. The appointed member of the commission serves a two-year term expiring February 1 of each odd-numbered year.

Sec. 2153.008. PRESIDING OFFICER; MEETINGS. (a) The governor is the presiding officer of the commission.

(b) The commission shall meet at the call of the governor.

Sec. 2153.009. CONFLICTS OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be the appointed member of the commission if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in a field related to the operation of the commission; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in a field related to the operation of the commission.

(c) A person may not be the appointed member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

Sec. 2153.010. APPOINTMENTS. Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Sec. 2153.011. REMOVAL OF APPOINTED MEMBER. (a) It is a ground for removal from the commission that the appointed member:

(1) is ineligible for membership under Section 2153.009;

(2) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(3) is absent from more than half of the commission's meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of the appointed commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the attorney general that a potential ground for removal exists.

Sec. 2153.012. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT. The executive director or the executive director's designee shall provide to the appointed member of the commission and to agency employees, as often as necessary, information regarding the requirements for office or employment under this subtitle, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 2153.013. COMPENSATION AND EXPENSES OF COMMISSION MEMBERS. (a) The appointed member of the commission may not receive compensation or a benefit because of the member's service on the commission except as provided by Subsection (b).

(b) For each day that the appointed commission member engages in the business of the commission, the member is entitled to:

(1) actual expenses for meals and lodging; and

(2) transportation expenses.

(c) Compensation and expenses under Subsection (b) shall be in the amount set by legislative appropriation.

SECTION 1.17. Section 2155.001, Government Code, is amended to read as follows:

Sec. 2155.001. DEFINITIONS. In ~~[Except as otherwise provided by]~~ this chapter and Chapters 2156, 2157, and 2158, except as otherwise provided:

(1) "Commission" means the Texas Procurement Commission.

(2) "Goods" means supplies, materials, or equipment.

(3) [(2)] "Service" means the furnishing of skilled or unskilled labor or professional work, but does not include a:

(A) professional service subject to Subchapter A, Chapter 2254;

(B) service of a state agency employee;

(C) consulting service or service of a consultant as defined by Subchapter B, Chapter 2254; or

(D) service of a public utility.

SECTION 1.18. Section 2161.001, Government Code, is amended to read as follows:

Sec. 2161.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Procurement Commission.

(2) "Goods" means supplies, materials, or equipment.

(3) [(2)] "Historically underutilized business" means an entity with its principal place of business in this state that is:

(A) a corporation formed for the purpose of making a profit in which 51 percent or more of all classes of the shares of stock or other equitable securities are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the corporation's control, operation, and management;

(B) a sole proprietorship created for the purpose of making a profit that is completely owned, operated, and controlled by an economically disadvantaged person;

(C) a partnership formed for the purpose of making a profit in which 51 percent or more of the assets and interest in the partnership are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the partnership's control, operation, and management;

(D) a joint venture in which each entity in the venture is a historically underutilized business, as determined under another paragraph of this subdivision; or

(E) a supplier contract between a historically underutilized business as determined under another paragraph of this subdivision and a prime contractor under which the historically underutilized business is directly involved in the manufacture or distribution of the goods or otherwise warehouses and ships the goods.

(4) ~~(3)~~ "Economically disadvantaged person" means a person who is economically disadvantaged because of the person's identification as a member of a certain group, including Black Americans, Hispanic Americans, women, Asian Pacific Americans, and Native Americans, and who has suffered the effects of discriminatory practices or other similar insidious circumstances over which the person has no control.

SECTION 1.19. Section 2162.001, Government Code, is amended to read as follows:

Sec. 2162.001. DEFINITIONS ~~[DEFINITION]~~. In this chapter:

(1) "Commission" means the Texas Procurement Commission.

(2) "Council"~~["council"]~~ means the State Council on Competitive Government.

SECTION 1.20. Subchapter A, Chapter 2165, Government Code, is amended by adding Section 2165.0001 to read as follows:

Sec. 2165.0001. DEFINITION. In this chapter, "commission" means the Texas Building Commission.

SECTION 1.21. Section 2166.001, Government Code, is amended to read as follows:

Sec. 2166.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Building Commission.

(2) "Construction" includes acquisition and reconstruction.

(3) ~~(2)~~ "Cost of a project" includes the cost of:

(A) real estate;

(B) other property;

(C) rights and easements;

(D) utility services;

(E) site development;

(F) construction and initial furnishing and equipment;

(G) architectural, engineering, and legal services;

(H) surveys, plans, and specifications; and

(I) other costs, including those incurred by the commission, that are necessary or incidental to determining the feasibility or practicability of a project.

(4) ~~(3)~~ "Private design professional" means a design professional as described by Subdivisions (7)(A) ~~[(6)(A)]~~ and (B)(ii).

(5) ~~(4)~~ "Project" means a building construction project that is financed wholly or partly by a specific appropriation, a bond issue, or federal money. The term includes the construction of:

(A) a building, structure, or appurtenant facility or utility, including the acquisition and installation of original equipment and original furnishings; and

(B) an addition to, or alteration, rehabilitation, or repair of, an existing building, structure, or appurtenant facility or utility.

(6) [(5)] "Project analysis" means work done before the legislative appropriation for a project to develop a reliable estimate of the cost of the project to be used in the appropriations request.

(7) [(6)] "Design professional" means an individual registered as an architect under Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), or a person registered as a professional engineer under The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes):

(A) who provides professional architectural or engineering services and has overall responsibility for the design of a building construction undertaking; and

(B) who:

(i) is employed on a salary basis; or

(ii) is in private practice and is retained for a specific project under a contract with the commission.

(8) [(7)] "Rehabilitation" includes renewal, restoration, extension, enlargement, and improvement.

(9) [(8)] "Small construction project" means a project that:

(A) has an estimated value of less than \$25,000; and

(B) requires advance preparation of working plans or drawings.

(10) [(9)] "Staged construction" means the construction of a project in phases, with each phase resulting in one or more trade packages, features, buildings, or structures that individually or together may be built, regardless of whether later phases of the project are authorized.

(11) [(10)] "Using agency" means:

(A) an instrumentality of the state that occupies and uses a state-owned or state-leased building; or

(B) the commission, with respect to a state-owned building maintained by the commission.

SECTION 1.22. Subchapter A, Chapter 2167, Government Code, is amended by adding Section 2167.0011 to read as follows:

Sec. 2167.0011. DEFINITION. In this chapter, "commission" means the Texas Building Commission.

SECTION 1.23. Subchapter A, Chapter 2171, Government Code, is amended by adding Section 2171.0001 to read as follows:

Sec. 2171.0001. DEFINITION. In this chapter, "commission" means the Texas Procurement Commission.

SECTION 1.24. Chapter 2172, Government Code, is amended by adding Section 2172.0001 to read as follows:

Sec. 2172.0001. DEFINITION. In this chapter, "commission" means the Texas Procurement Commission.

SECTION 1.25. Section 2175.001, Government Code, is amended to read as follows:

Sec. 2175.001. DEFINITIONS. In this chapter:

(1) "Assistance organization" means:

(A) a nonprofit organization that provides educational, health, or human services or assistance to homeless individuals;

(B) a nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;

(C) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance office of the Agency for International Development; ~~and~~

(D) a group, including a faith-based group, that enters into a financial or nonfinancial agreement with a health or human services agency to provide services to that agency's clients;

(E) a nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters; and

(F) the Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Agriculture Code.

(2) "Commission" means the Texas Procurement Commission.

(3) "Personal property" includes:

(A) personal property lawfully confiscated and subject to disposal by a state agency; and

(B) personal property affixed to real property, if its removal and disposition is for a lawful purpose under this or another law.

~~(4)~~ (3) "Salvage property" means personal property that through use, time, or accident is so damaged, used, or consumed that it has no value for the purpose for which it was originally intended.

~~(5)~~ (4) "Surplus property" means personal property that exceeds a state agency's needs and is not required for the agency's foreseeable needs. The term includes used or new property that retains some usefulness for the purpose for which it was intended or for another purpose.

~~(6)~~ (5) "Data processing equipment" means equipment described by Section 2054.003(3)(A).

SECTION 1.26. On October 1, 2001, the General Services Commission is abolished.

SECTION 1.27. On October 1, 2001:

(1) the Department of Information Resources replaces the General Services Commission as the telecommunications services provider for state government;

(2) all functions and activities performed by the General Services Commission that relate to providing telecommunications services for state government or to the establishment of the electronic procurement marketplace or the electronic commerce network under Chapters 2170 and 2177, Government Code, or other law immediately before that date are transferred to the Department of Information Resources;

(3) all employees of the General Services Commission who primarily perform duties related to providing telecommunications services for state government or to the establishment of the electronic procurement marketplace or the electronic commerce network, including employees who provide administrative support for those services, under Chapters 2170 and 2177, Government Code, or other law become employees of the Department of Information Resources, but continue to work in the same physical location unless moved in accordance with the plan created under Section 1.30 of this Act;

(4) a rule or form adopted by the General Services Commission that relates to providing telecommunications services for state government or to the establishment

of the electronic procurement marketplace or the electronic commerce network under Chapters 2170 and 2177, Government Code, or other law is a rule or form of the Department of Information Resources and remains in effect until changed by the department;

(5) a reference in law to the General Services Commission that relates to providing telecommunications services for state government or to the establishment of the electronic procurement marketplace or the electronic commerce network under Chapters 2170 and 2177, Government Code, or other law means the Department of Information Resources;

(6) a waiver in effect that was issued by the General Services Commission relating to telecommunications under Chapter 2170, Government Code, or other law is continued in effect as a waiver of the Department of Information Resources;

(7) a rate case, contract negotiation, or other proceeding involving the General Services Commission that is related to providing telecommunications services for state government or to the establishment of the electronic procurement marketplace or the electronic commerce network under Chapters 2170 and 2177, Government Code, or other law is transferred without change in status to the Department of Information Resources, and the Department of Information Resources assumes, without a change in status, the position of the General Services Commission in a negotiation or proceeding relating to telecommunications, the marketplace, or the network to which the General Services Commission is a party;

(8) all money, contracts, leases, rights, and obligations of the General Services Commission related to providing telecommunications services for state government or to the establishment of the electronic procurement marketplace or the electronic commerce network under Chapters 2170 and 2177, Government Code, or other law are transferred to the Department of Information Resources;

(9) all property, including records, in the custody of the General Services Commission related to providing telecommunications services for state government or to the establishment of the electronic procurement marketplace or the electronic commerce network under Chapters 2170 and 2177, Government Code, or other law becomes the property of the Department of Information Resources, but stays in the same physical location unless moved in accordance with the plan created under Section 1.30 of this Act; and

(10) all funds appropriated by the legislature to the General Services Commission for purposes related to providing telecommunications services for state government or to the establishment of the electronic procurement marketplace or the electronic commerce network, including funds for providing administrative support for those services such as funds to pay the salary and benefits of employees who provide the administrative support, under Chapters 2170 and 2177, Government Code, or other law are transferred to the Department of Information Resources.

SECTION 1.28. On October 1, 2001:

(1) the Texas Building Commission replaces the General Services Commission as the governmental entity generally responsible for state buildings, grounds, and property, other than matters related to the purchase of goods or to the disposition of surplus or salvage property, and as the governmental entity generally responsible for building construction and acquisition for state government;

(2) all functions and activities performed by the General Services Commission that relate to state buildings, grounds, and property, other than matters

related to the purchase of goods or to the disposition of surplus or salvage property, or that relate to building construction and acquisition for state government under Chapters 2165-2167 and 2176, Government Code, or other law are transferred to the Texas Building Commission;

(3) all employees of the General Services Commission who primarily perform duties related to state buildings, grounds, and property, other than matters related to the purchase of goods or to the disposition of surplus or salvage property, or who primarily perform duties related to building construction and acquisition for state government, including employees who provide administrative support for those activities, under Chapters 2165-2167 and 2176, Government Code, or other law become employees of the State Preservation Board to be used to administer the functions of the Texas Building Commission, but continue to work in the same physical location unless moved in accordance with the plan created under Section 1.30 of this Act;

(4) a rule, form, plan, report, or procedure adopted by the General Services Commission that relates to state buildings, grounds, and property, other than matters related to the purchase of goods or to the disposition of surplus or salvage property, or that relates to building construction and acquisition for state government under Chapters 2165-2167 and 2176, Government Code, or other law is a rule, form, plan, report, or procedure of the Texas Building Commission and remains in effect until changed by the Texas Building Commission;

(5) a reference in law to the General Services Commission that relates to state buildings, grounds, and property, other than matters related to the purchase of goods or to the disposition of surplus or salvage property, or that relates to building construction and acquisition for state government under Chapters 2165-2167 and 2176, Government Code, or other law means the Texas Building Commission;

(6) an easement, franchise, contract, license, or right-of-way that was granted or awarded by or to the General Services Commission relating to state buildings, grounds, and property, other than matters related to the purchase of goods or to the disposition of surplus or salvage property, or relating to building construction and acquisition for state government under Chapters 2165-2167 and 2176, Government Code, or other law is continued in effect as an easement, franchise, contract, license, or right-of-way granted or awarded by or to the Texas Building Commission;

(7) a contract negotiation or other proceeding involving the General Services Commission that is related to state buildings, grounds, and property, other than matters related to the purchase of goods or to the disposition of surplus or salvage property, or that is related to building construction and acquisition for state government under Chapters 2165-2167 and 2176, Government Code, or other law is transferred without change in status to the Texas Building Commission, and the Texas Building Commission assumes, without a change in status, the position of the General Services Commission in a negotiation or proceeding relating to state buildings, grounds, and property, other than matters related to the purchase of goods or to the disposition of surplus or salvage property, or relating to building construction and acquisition, to which the General Services Commission is a party;

(8) all money, contracts, leases, rights, and obligations of the General Services Commission related to state buildings, grounds, and property, other than matters related to the purchase of goods or to the disposition of surplus or salvage

property, or related to building construction and acquisition for state government under Chapters 2165-2167 and 2176, Government Code, or other law are transferred to the Texas Building Commission;

(9) all property, including records, in the custody of the General Services Commission related to state buildings, grounds, and property, other than matters related to the purchase of goods or to the disposition of surplus or salvage property, or related to building construction and acquisition for state government under Chapters 2165-2167 and 2176, Government Code, or other law becomes property of the State Preservation Board to be used to administer the functions of the Texas Building Commission, but stays in the same physical location unless moved in accordance with the plan created under Section 1.30 of this Act; and

(10) all funds appropriated by the legislature to the General Services Commission for purposes related to state buildings, grounds, and property, other than matters related to the purchase of goods or to the disposition of surplus or salvage property, or related to building construction and acquisition for state government, including funds for providing administrative support for those activities such as funds to pay the salary and benefits of employees who provide the administrative support, under Chapters 2165-2167 and 2176, Government Code, or other law are transferred to the State Preservation Board to be used to administer the functions of the Texas Building Commission.

SECTION 1.29. (a) On October 1, 2001:

(1) the Texas Procurement Commission replaces the General Services Commission as the governmental entity responsible for the purchase of goods or services for the state, other than services relating to the construction, repair, acquisition, maintenance, or charge and control of real property, for the disposition of surplus or salvage property, and for other miscellaneous powers and duties;

(2) all functions and activities performed by the General Services Commission that relate to the purchase of goods or services for the state, other than services relating to the construction, repair, acquisition, maintenance, or charge and control of real property, to the disposition of surplus or salvage property, or to other miscellaneous powers and duties under Chapters 552, 2155-2158, 2161, 2171, 2172, 2175, and 2177, Government Code, or other law are transferred to the Texas Procurement Commission;

(3) all employees of the General Services Commission who primarily perform duties related to the purchase of goods or services for the state, other than services relating to the construction, repair, acquisition, maintenance, or charge and control of real property, to the disposition of surplus or salvage property, or to other miscellaneous powers and duties under Chapters 552, 2155-2158, 2161, 2171, 2172, 2175, and 2177, Government Code, or other law become employees of the Texas Procurement Commission, but continue to work in the same physical location unless moved in accordance with the plan created under Section 1.30 of this Act;

(4) a rule, form, plan, specification, standard, report, or procedure adopted by the General Services Commission that relates to the purchase of goods or services for the state, other than services relating to the construction, repair, acquisition, maintenance, or charge and control of real property, to the disposition of surplus or salvage property, or to other miscellaneous powers and duties under Chapters 552, 2155-2158, 2161, 2171, 2172, 2175, and 2177, Government Code, or other law is a rule, form, plan, specification, standard, report, or procedure of the Texas Procurement Commission and remains in effect until changed by the commission;

(5) a reference in law to the General Services Commission that relates to the purchase of goods or services for the state, other than services relating to the construction, repair, acquisition, maintenance, or charge and control of real property, to the disposition of surplus or salvage property, or to other miscellaneous powers and duties under Chapters 552, 2155-2158, 2161, 2171, 2172, 2175, and 2177, Government Code, or other law means the Texas Procurement Commission;

(6) a waiver, license, or contract award that was granted by the General Services Commission relating to the purchase of goods or services for the state, other than services relating to the construction, repair, acquisition, maintenance, or charge and control of real property, to the disposition of surplus or salvage property, or to other miscellaneous powers and duties under Chapters 552, 2155-2158, 2161, 2171, 2172, 2175, and 2177, Government Code, or other law is continued in effect as a waiver, license, or contract award granted by the Texas Procurement Commission;

(7) a contract negotiation or other proceeding involving the General Services Commission that is related to the purchase of goods or services for the state, other than services relating to the construction, repair, acquisition, maintenance, or charge and control of real property, to the disposition of surplus or salvage property, or to other miscellaneous powers and duties under Chapters 552, 2155-2158, 2161, 2171, 2172, 2175, and 2177, Government Code, or other law is transferred without change in status to the Texas Procurement Commission, and the commission assumes, without a change in status, the position of the General Services Commission in a negotiation or proceeding relating to the purchase of goods or services for the state, other than services relating to the construction, repair, acquisition, maintenance, or charge and control of real property, to the disposition of surplus or salvage property, or to other miscellaneous powers and duties to which the General Services Commission is a party;

(8) all money, contracts, leases, rights, and obligations of the General Services Commission related to the purchase of goods or services for the state, other than services relating to the construction, repair, acquisition, maintenance, or charge and control of real property, to the disposition of surplus or salvage property, or to other miscellaneous powers and duties under Chapters 552, 2155-2158, 2161, 2171, 2172, 2175, and 2177, Government Code, or other law are transferred to the Texas Procurement Commission;

(9) all property, including records, in the custody of the General Services Commission related to the purchase of goods or services for the state, other than services relating to the construction, repair, acquisition, maintenance, or charge and control of real property, to the disposition of surplus or salvage property, or to other miscellaneous powers and duties under Chapters 552, 2155-2158, 2161, 2171, 2172, 2175, and 2177, Government Code, or other law becomes property of the Texas Procurement Commission, but stays in the same physical location unless moved in accordance with the plan created under Section 1.30 of this Act; and

(10) all funds appropriated by the legislature to the General Services Commission for purposes related to the purchase of goods or services for the state, other than services relating to the construction, repair, acquisition, maintenance, or charge and control of real property, to the disposition of surplus or salvage property, or to other miscellaneous powers and duties under Chapters 552, 2155-2158, 2161, 2171, 2172, 2175, and 2177, Government Code, or other law are transferred to the Texas Procurement Commission.

(b) The Texas Procurement Commission shall also perform the functions assigned to the General Services Commission under Chapter 428, Acts of the 73rd Legislature, Regular Session, 1993.

SECTION 1.30. The General Services Commission, the Texas Procurement Commission, the Texas Building Commission, and the Department of Information Resources shall establish a transition plan for the transfer described in Sections 1.27, 1.28, and 1.29 of this Act. The plan must include:

(1) a timetable for any necessary or advisable movement of the physical location of employees and property;

(2) an inventory of all equipment and other property required to be transferred;

(3) a determination of any continued support and cooperation the commission must provide the other agencies before the commission is abolished to ensure an efficient continuation of service and of planning for future needs; and

(4) provisions for the immediate access of the Department of Information Resources to facilities that house telecommunications equipment and any related facilities.

SECTION 1.31. (a) Before December 31, 2001, the Texas Procurement Commission, the Texas Building Commission, and the Department of Information Resources shall adopt by rule a memorandum of understanding under which the agencies clarify, to the extent necessary, the transfer of powers and duties under this Act. The memorandum of understanding shall be sent to the governor, the lieutenant governor, and the speaker of the house of representatives.

(b) If the Texas Procurement Commission, the Texas Building Commission, and the Department of Information Resources do not agree regarding to which entity a power or duty has been transferred by this Act, the governor shall determine whether the power or duty is transferred to the Texas Procurement Commission, the Texas Building Commission, or the Department of Information Resources.

SECTION 1.32. (a) The governor shall make appointments to the Texas Procurement Commission in accordance with Section 2152.051, Government Code, as amended by this Act, as soon as possible after September 1, 2001, so that the procurement commission may begin performing its duties on the abolition of the General Services Commission on October 1, 2001.

(b) The Texas Procurement Commission shall hold its first meeting as soon as possible on or after October 1, 2001. The governor may designate a person to perform the necessary duties involved in posting notice and making other preparations for the meeting.

(c) In making appointments under this section the governor shall appoint:

(1) one member for a term expiring January 31, 2003;

(2) two members for terms expiring January 31, 2005; and

(3) two members for terms expiring January 31, 2007.

(d) Section 2152.0581, Government Code, as added by this Act, does not apply to the members of the Texas Procurement Commission until June 1, 2002.

SECTION 1.33. The governor shall make the appointment to the Texas Building Commission in accordance with Section 2153.006, Government Code, as added by this Act, as soon as possible after September 1, 2001. The term of the initial appointee expires February 1, 2003.

ARTICLE 2. MULTIPLE AWARD CONTRACTS FOR
STATE AND LOCAL GOVERNMENT PURCHASES

SECTION 2.01. Chapter 2155, Government Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. MULTIPLE AWARD CONTRACT SCHEDULE

Sec. 2155.501. DEFINITIONS. In this subchapter:

(1) "Department" means the Department of Information Resources.
(2) "Local government" has the meaning assigned by Section 271.101, Local Government Code.

(3) "Multiple award contract" means an award of a contract for an indefinite amount of one or more similar goods or services from a vendor.

(4) "Schedule" means a list of multiple award contracts from which agencies may purchase goods and services.

Sec. 2155.502. DEVELOPMENT OF MULTIPLE AWARD CONTRACT SCHEDULE. (a) The commission shall develop a schedule of multiple award contracts that have been previously awarded using a competitive process by:

(1) the federal government, including the federal General Services Administration; or

(2) any other governmental entity in any state.

(b) In developing the schedule under Subsection (a), the commission shall modify any contractual terms, with the agreement of the parties to the contract, as necessary to comply with any federal or state requirements, including rules adopted under this subchapter.

(c) The commission may not list a multiple award contract on a schedule developed under this section if the goods or services provided by that contract are available from only one vendor.

Sec. 2155.503. RULES. (a) The commission and the department shall adopt rules to implement this subchapter. The rules must:

(1) establish standard terms for contracts listed on a schedule; and

(2) maintain consistency with existing purchasing standards.

(b) The commission and the department shall consult with the attorney general and the comptroller in developing rules under this section.

Sec. 2155.504. USE OF SCHEDULE BY GOVERNMENTAL ENTITIES.

(a) A state agency or local government may purchase goods or services directly from a vendor under a contract listed on a schedule developed under this subchapter. A purchase authorized by this section satisfies any requirement of state law relating to competitive bids or proposals and satisfies any applicable requirements of Chapter 2157.

(b) The price listed for a good or service under a multiple award contract is a maximum price. An agency or local government may negotiate a lower price for goods or services under a contract listed on a schedule developed under this subchapter.

Sec. 2155.505. HISTORICALLY UNDERUTILIZED AND SMALL BUSINESSES. (a) In this section:

(1) "Historically underutilized business" has the meaning assigned by Section 2161.001.

(2) "Small business" means a small business concern as defined by regulations of the United States Small Business Administration in 13 C.F.R. Section 121.201.

(b) The commission shall strongly encourage each vendor with a contract listed on a schedule developed under this subchapter and who is not a historically underutilized business or small business to use historically underutilized or small businesses to sell or provide a service under the contract. If a vendor does not make a good faith effort to use historically underutilized and small businesses under the contract, the commission may exclude the vendor from being listed on a schedule developed under this subchapter.

(c) A historically underutilized business or small business may sell or provide a service under another vendor's contract listed on a schedule developed under this subchapter if:

(1) the contract is on a schedule developed under Section 2155.502;

(2) the vendor for the contract authorizes in writing the historically underutilized business or small business to sell or provide a service under that contract; and

(3) the historically underutilized business or small business provides that written authorization to the commission.

Sec. 2155.506. REPORTING REQUIREMENTS. (a) A vendor listed on a contract for a schedule developed under this subchapter shall report its sales to the commission in the manner prescribed by the commission.

(b) The commission shall compile the information reported under Subsection (a) and include the information in its report under Section 2101.011.

Sec. 2155.507. EXEMPTION FROM CATALOGUE PURCHASE METHOD FOR INFORMATION SYSTEM VENDORS. Section 2157.062 does not apply to a vendor who applies to be listed on a schedule developed under this subchapter.

Sec. 2155.508. INTERNET AVAILABILITY. (a) The commission shall develop a database of the multiple award contracts developed under this subchapter and make that information available on an Internet site. The database must have search capabilities that allow a person to easily access the contracts.

(b) The commission shall allow vendors to apply through the Internet site to be listed on a schedule developed under this subchapter. The applicant shall provide an electronic mail address to the commission as part of the application process.

(c) The department shall post appropriate information regarding contracts developed under this subchapter to any electronic procurement system developed under Chapter 2177. On request by the department, the commission and any vendor with a contract on a schedule developed under this subchapter shall provide to the department any information necessary for posting on the system.

Sec. 2155.509. NOTICE REGARDING PROCUREMENTS EXCEEDING \$25,000. After a purchase order has been placed, a state agency subject to Section 2155.083 shall post, as required under that section, a procurement made under a contract listed on a schedule developed under this subchapter.

SECTION 2.02. Section 2155.079(a), Government Code, is amended to read as follows:

(a) The commission shall adopt rules specifying the circumstances under which it is advantageous for the state to allow a state agency to purchase goods or services under a contract made by another state agency other than the commission, including as provided under Subchapter I.

SECTION 2.03. (a) Not later than March 1, 2002, the Texas Procurement Commission shall develop initial schedules of multiple award contracts under Section 2155.502, Government Code, as added by this Act.

(b) Not later than January 1, 2002, the Texas Procurement Commission shall adopt the rules required by Subchapter I, Chapter 2155, Government Code, as added by this Act.

ARTICLE 3. OVERSIGHT OF MAJOR INFORMATION RESOURCES PROJECTS

SECTION 3.01. Section 2054.003, Government Code, is amended by adding a new Subdivision (8) and renumbering existing Subdivisions (8), (9), and (10) as Subdivisions (9), (10), and (11) to read as follows:

(8) "Major information resources project" means:

(A) any information resources technology project identified in a state agency's biennial operating plan whose development costs exceed \$1 million and that:

(i) requires one year or longer to reach operations status;

(ii) involves more than one state agency; or

(iii) substantially alters work methods of state agency personnel or the delivery of services to clients; and

(B) any information resources technology project designated by the legislature in the General Appropriations Act as a major information resources project.

(9) "Project" means a program to provide information resources technologies support to functions within or among elements of a state agency, that ideally is characterized by well-defined parameters, specific objectives, common benefits, planned activities, a scheduled completion date, and an established budget with a specified source of funding.

(10) [(9)] "State agency" means a department, commission, board, office, council, or other agency in the executive or judicial branch of state government that is created by the constitution or a statute of this state, including a university system or institution of higher education as defined by Section 61.003, Education Code.

(11) [(10)] "Telecommunications" means any transmission, emission, or reception of signs, signals, writings, images, or sounds of intelligence of any nature by wire, radio, optical, or other electromagnetic systems. The term includes all facilities and equipment performing those functions that are owned, leased, or used by state agencies and branches of state government.

SECTION 3.02. Subchapter F, Chapter 2054, Government Code, is amended by adding Section 2054.1181 to read as follows:

Sec. 2054.1181. OVERSIGHT OF MAJOR INFORMATION RESOURCES PROJECTS. (a) The department shall create a division in the department to oversee the implementation of major information resources projects.

(b) In performing its duties under this section, the department shall:

(1) develop policies for the oversight of projects;

(2) implement project management standards;

(3) use effective risk management strategies;

(4) establish standards that promote the ability of information resources systems to operate with each other; and

(5) use industry best practices and process reengineering when feasible.

(c) The division shall be funded from a percentage of money appropriated to or budgeted by state agencies for the major information resources projects designated by the legislature under Section 2054.003(8)(B). The legislature shall prescribe the percentage or percentages, as applicable, in the General Appropriations Act.

SECTION 3.03. Section 2054.118(d), Government Code, is repealed.

ARTICLE 4. TELECOMMUNICATIONS

SECTION 4.01. Section 2054.051(e), Government Code, is amended to read as follows:

(e) The department shall provide for all interagency use of information resources technologies by state agencies[~~except for telecommunications services provided by the General Services Commission under other law~~]. The department may provide for interagency use of information resources technologies either directly or by certifying another state agency to provide specified uses of information resources technologies to other state agencies.

SECTION 4.02. Section 2054.091(d), Government Code, is amended to read as follows:

(d) The executive director shall appoint an advisory committee to assist in the preparation of the state strategic plan. The members of the advisory committee appointed by the executive director must be approved by the board and must include officers or employees of state government. The telecommunications planning and oversight council shall appoint one of its members to serve as a member of the advisory committee.

SECTION 4.03. The heading to Subchapter H, Chapter 2054, Government Code, is amended to read as follows:

SUBCHAPTER H. TELECOMMUNICATIONS PLANNING
AND OVERSIGHT COUNCIL ~~[GROUP]~~

SECTION 4.04. Section 2054.201, Government Code, is amended to read as follows:

Sec. 2054.201. COMPOSITION; TERMS. (a) The telecommunications planning and oversight council ~~[group]~~ is composed of:

- (1) a representative of the comptroller's office, appointed by the comptroller;
- (2) the executive director of the Telecommunications Infrastructure Fund

Board;

(3) a representative of the Texas Procurement Commission, appointed by the executive director of the commission;

(4) a member representing the interests of state agencies with 1,000 employees or more, appointed by the lieutenant governor;

(5) a member representing the interests of state agencies with fewer than 1,000 employees, appointed by the speaker of the house of representatives;

(6) a member representing the interests of institutions of higher education, appointed by the commissioner of higher education;

(7) a member representing the interests of The University of Texas System, appointed by the chancellor;

(8) a member representing the interests of The Texas A&M University System, appointed by the chancellor;

(9) a member representing the interests of public school districts that are customers of the consolidated telecommunications system, appointed by the governor;

(10) a member representing the interests of local governments that are customers of the consolidated telecommunications system, appointed by the governor; and

(11) two public members with telecommunications expertise, appointed by the governor ~~[the comptroller, the executive director of the department, and the executive director of the General Services Commission].~~

(b) Appointed members of the telecommunications planning and oversight council serve two-year terms, except that the representative of the comptroller's office serves at the discretion of the comptroller and the representative of the Texas Procurement Commission serves at the discretion of the executive director of the commission [~~Each member of the group may designate an employee of the member's agency to serve in the member's place.~~].

(c) Members of the telecommunications planning and oversight council who represent a state agency shall abstain from any action taken by the council regarding a request for a waiver under Section 2170.051 from the state agency that is represented by the member.

SECTION 4.05. Subchapter H, Chapter 2054, Government Code, is amended by adding Section 2054.2011 to read as follows:

Sec. 2054.2011. DEFINITIONS. In this subchapter:

(1) "Centralized capitol complex telephone system" means the system described in Section 2170.059.

(2) "Consolidated telecommunications system" has the meaning assigned by Section 2170.001.

SECTION 4.06. Section 2054.202, Government Code, is amended to read as follows:

Sec. 2054.202. ADMINISTRATIVE PROVISIONS. (a) The telecommunications planning and oversight council [~~group~~] shall post notice of its meetings in accordance with the open meetings law, Chapter 551, in the manner required for a state governmental body under that chapter.

(b) The department shall provide [~~coordinate~~] the staff and administrative support necessary for [~~provided to~~] the telecommunications planning and oversight council to perform its duties under this subchapter [~~group by the department, by the comptroller, and by the General Services Commission~~].

(c) The telecommunications planning and oversight council [~~group~~] may periodically elect one of its members to serve as presiding officer of the council [~~group~~].

SECTION 4.07. Section 2054.203, Government Code, is amended by amending Subsections (a)-(d) and adding Subsection (g) to read as follows:

(a) The telecommunications planning and oversight council [~~group~~] shall comprehensively collect and manage telecommunications network configuration information about existing and planned telecommunications networks throughout state government.

(b) The telecommunications planning and oversight council [~~group~~] may require state agencies to submit to the council [~~group~~] the agencies' network configuration information, but the council [~~group~~] must use existing reports to gather the information if possible and minimize the reporting burden on agencies to the extent possible.

(c) The telecommunications planning and oversight council [~~group~~] shall establish plans and policies for a system of telecommunications services to be managed and operated by the department [~~General Services Commission~~].

(d) The telecommunications planning and oversight council [~~group~~] shall develop a statewide telecommunications operating plan for all state agencies. The plan shall implement a statewide network and include technical specifications that are binding on the department [~~General Services Commission~~].

(g) The telecommunications planning and oversight council shall perform strategic planning for all state telecommunications services in accordance with the guiding principles of the state strategic plan for information resources management.

SECTION 4.08. Sections 2054.204(a) and (c), Government Code, are amended to read as follows:

(a) The telecommunications planning and oversight council [group] shall develop a plan for a state telecommunications network that will effectively and efficiently meet the long-term requirements of state government for voice, video, and computer communications, with the goal of achieving a single centralized telecommunications network for state government.

(c) The plan must incorporate efficiencies obtained through the use of shared transmission services and open systems architecture as they become available, building on existing systems as appropriate. In developing the plan, the telecommunications planning and oversight council [group] shall make use of the technical expertise of state agencies, including institutions of higher education.

SECTION 4.09. Section 2054.205, Government Code, is amended to read as follows:

Sec. 2054.205. DEVELOPMENT OF SYSTEM. (a) The telecommunications planning and oversight council [group] shall develop functional requirements for a statewide system of telecommunications services for all state agencies. Existing networks, as configured on September 1, 1991, of institutions of higher education are exempt from the requirements.

(b) The telecommunications planning and oversight council [group] shall develop requests for information and proposals for a statewide system of telecommunications services for all state agencies.

(c) The telecommunications planning and oversight council [group] shall negotiate rates and execute contracts with telecommunications service providers for services. The telecommunications planning and oversight council [group] may:

(1) acquire transmission facilities by purchase, lease, or lease-purchase in accordance with Chapters 2155-2158; and

(2) develop, establish, and maintain carrier systems necessary to the operation of the telecommunications system.

SECTION 4.10. Subchapter H, Chapter 2054, Government Code, is amended by adding Section 2054.2051 to read as follows:

Sec. 2054.2051. OVERSIGHT OF SYSTEMS. (a) The telecommunications planning and oversight council shall develop service objectives for the consolidated telecommunications system and the centralized capitol complex telephone system.

(b) The telecommunications planning and oversight council shall develop performance measures for the operations and staff of the consolidated telecommunications system and the centralized capitol complex telephone system.

(c) The telecommunications planning and oversight council shall review every three months the status of all projects related to and the financial performance of the consolidated telecommunications system and the centralized capitol complex telephone system, including a comparison between actual performance and projected goals.

(d) The telecommunications planning and oversight council shall make recommendations to the board on ways to improve the operation of the consolidated telecommunications system and the centralized capitol complex telephone system based on its review of their performance and on concerns raised by using entities.

SECTION 4.11. Section 2054.206, Government Code, is amended to read as follows:

Sec. 2054.206. ANNUAL REPORT. The telecommunications planning and oversight council shall submit an annual report to the department and to each entity served by the consolidated telecommunications system or the centralized capitol complex telephone system. The report must include:

(1) information about the accomplishment of service objectives and other performance measures for management of the consolidated telecommunications system and the centralized capitol complex telephone system;

(2) information about the accounting and financial performance of the consolidated telecommunications system and the centralized capitol complex telephone system;

(3) estimates of savings to entities served by the consolidated telecommunications system over standard rates available to state agencies who acquire telecommunications services directly;

(4) trends in network use, including the number of users, workstations, and locations supported; and

(5) rate information for services provided by the consolidated telecommunications system and the centralized capitol complex telephone system. ~~[ADVISORY AGENCIES. The following state agencies shall formally advise the telecommunications planning group and send representatives to meetings of the group:~~

~~[(1) the Texas Education Agency;~~

~~[(2) the Texas Higher Education Coordinating Board;~~

~~[(3) The Texas A&M University System;~~

~~[(4) The University of Texas System;~~

~~[(5) the Telecommunications Infrastructure Fund Board; and~~

~~[(6) the Texas State Library and Archives Commission.]~~

SECTION 4.12. Section 2054.207, Government Code, is amended to read as follows:

Sec. 2054.207. REPORT TO LEGISLATURE. The telecommunications planning and oversight council ~~[group]~~ shall report biennially to the legislature not later than October 1 of each even-numbered year on the status of the current plan for a state telecommunications network and on the progress state government has made towards accomplishing the goals of the plan. The report shall address consolidated telecommunications system performance, centralized capitol complex telephone system performance, telecommunications system needs, and recommended statutory changes to enhance system capability and cost-effectiveness.

SECTION 4.13. Section 2157.001(1), Government Code, is amended to read as follows:

(1) "Automated information system" includes:

(A) the computers and computer devices on which an information system is automated, including computers and computer devices that the commission identifies in guidelines developed by the commission in consultation with the Department of Information Resources and in accordance with Chapter 2054 and rules adopted under that chapter;

(B) a service related to the automation of an information system, including computer software or computers;

(C) a telecommunications apparatus or device that serves as a component of a voice, data, or video communications network for transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on the network, and services related to telecommunications that are not covered under Paragraph (D); and

(D) for the Department of Information Resources [~~General Services Commission~~], as telecommunications provider for the state, the term includes any service provided by a telecommunications provider, as that term is defined by Section 51.002, Utilities Code.

SECTION 4.14. Section 2157.121, Government Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A state agency, other than the Department of Information Resources, shall send its proposal specifications and criteria to the commission for approval or request the commission to develop the proposal specifications and criteria.

(c) The Department of Information Resources may acquire a telecommunications device, system, or service or an automated information system by using competitive sealed proposals without regard to whether the commission makes the determination required under Subsection (a) for other state agencies.

SECTION 4.15. Section 2170.001(a), Government Code, is amended by adding Subdivision (3) to read as follows:

(3) "Department" means the Department of Information Resources.

SECTION 4.16. Section 2170.002, Government Code, is amended to read as follows:

Sec. 2170.002. DEPARTMENT [~~COMMISSION~~] RESPONSIBLE FOR OBTAINING TELECOMMUNICATIONS SERVICES. The department [~~commission~~] is the state agency responsible for obtaining telecommunications services.

SECTION 4.17. Section 2170.003, Government Code, is amended to read as follows:

Sec. 2170.003. OWNERSHIP OR LEASE OF NECESSARY EQUIPMENT. The department [~~commission~~] may own, lease, or lease-purchase in accordance with Chapters 2155, 2156, 2157, and 2158 any or all of the facilities or equipment necessary to provide telecommunications services.

SECTION 4.18. Section 2170.004, Government Code, is amended to read as follows:

Sec. 2170.004. CONTRACTS WITH ENTITIES OTHER THAN STATE AGENCIES. The department [~~commission~~] may contract for use of the consolidated telecommunications system with:

- (1) each house of the legislature;
- (2) a legislative agency;
- (3) an agency that is not a state agency as defined by Section 2151.002; and
- (4) a political subdivision, including a county, municipality, or district.

SECTION 4.19. Sections 2170.005(a) and (c), Government Code, are amended to read as follows:

(a) To ensure efficient operation of the consolidated telecommunications system at minimum cost to the state, the department [~~commission~~] shall adopt and disseminate to all agencies appropriate guidelines, operating procedures, and telephone directories.

(c) Telephone directories published by the department [~~commission~~] under this section and Section 2170.059 must be revised regularly and must list state telephone numbers alphabetically by the subject matter of agency programs as well as alphabetically by agency. The subject matter listing of programs and telephone numbers in the telephone directories must be consistent with the categorization developed by the Records Management Interagency Coordinating Council under Section 441.203 [~~441.053~~]. The department [~~commission~~] may authorize, under procedures and rules considered appropriate by the department [~~commission~~], a yellow pages advertising section in the directories to recover development, publication, and distribution costs of the directories.

SECTION 4.20. Section 2170.006, Government Code, is amended to read as follows:

Sec. 2170.006. COST-EFFECTIVENESS OF SYSTEM. (a) The department [~~commission~~], with the advice of the state auditor, shall maintain records relating to the consolidated telecommunications system necessary to enable the department [~~commission~~] to analyze the cost-effectiveness of the system to state agencies.

(b) The department [~~commission~~] shall advise the legislature at each session about the system's cost-effectiveness.

SECTION 4.21. Section 2170.008, Government Code, is amended to read as follows:

Sec. 2170.008. RATE INTERVENTION. (a) If the department [~~commission~~] determines there is sufficient economic impact on state government, the department [~~commission~~] may intervene on behalf of state agencies in telecommunications rate cases and may hire special counsel and expert witnesses to prepare and present testimony.

(b) The attorney general shall represent the department [~~commission~~] before the courts in all appeals from rate cases in which the department [~~commission~~] intervenes.

SECTION 4.22. Sections 2170.009(a) and (c), Government Code, are amended to read as follows:

(a) A pay telephone may be located in the capitol complex only with the approval of the department [~~commission~~]. The department [~~commission~~] shall collect the revenue from the installation and operation of the pay telephone and deposit it to the credit of the general revenue fund.

(c) The department [~~commission~~] or other state entity shall account for the revenue collected under this section in the entity's annual report.

SECTION 4.23. Section 2170.051, Government Code, is amended to read as follows:

Sec. 2170.051. MANAGEMENT AND USE OF SYSTEM. (a) The department [~~commission~~] shall manage the operation of a system of telecommunications services for all state agencies. Each agency shall identify its particular requirements for telecommunications services and the site at which the services are to be provided.

(b) The department [~~commission~~] shall fulfill the telecommunications requirements of each state agency to the extent possible and to the extent that money is appropriated or available for that purpose.

(c) A state agency shall use the consolidated telecommunications system to the fullest extent possible. A state agency may not acquire telecommunications services unless the telecommunications planning and oversight council [~~group~~] determines that the agency's requirement for telecommunications services cannot be met at a comparable cost by the consolidated telecommunications system.

(d) A state agency may not enter into or renew a contract with a carrier or other provider of telecommunications services without obtaining a waiver from the telecommunications planning and oversight council [group] certifying that the requested telecommunications services cannot be provided at a comparable cost on the consolidated telecommunications system. The telecommunications planning and oversight council [group] shall evaluate requests for waivers based on cost-effectiveness to the state government as a whole. A waiver may be granted only for a specific period and will automatically expire on the stated expiration date unless an extension is approved by the telecommunications planning and oversight council [group]. A contract for telecommunications services obtained under waiver may not extend beyond the expiration date of the waiver. If the telecommunications planning and oversight council [group] becomes aware of any state agency receiving telecommunications services without a waiver, the telecommunications planning and oversight council [group] shall notify the agency and the comptroller. The state agency shall have 60 days after notification by the telecommunications planning and oversight council [group] in which to submit a waiver request to the telecommunications planning and oversight council [group] documenting the agency's reasons [reasoning] for bypassing the consolidated telecommunications system and otherwise providing all information required by the waiver application form.

SECTION 4.24. Section 2170.052, Government Code, is amended to read as follows:

Sec. 2170.052. BALANCING TECHNOLOGICAL ADVANCEMENTS AND EXISTING FACILITIES. In the planning, design, implementation, and operation of the consolidated telecommunications system, the department [commission] shall maintain an appropriate balance between the adoption of technological advancements and the efficient use of existing facilities and services to avoid misapplication of state money and degradation or loss of the integrity of existing systems and facilities.

SECTION 4.25. Section 2170.056, Government Code, is amended to read as follows:

Sec. 2170.056. COSTS TO STATE OF PARALLEL TOLLS. All contracts with telecommunications carriers shall provide that the department [commission] or any participating agency may obtain any information relating to the costs to the state of parallel tolls.

SECTION 4.26. Sections 2170.057(a), (c), and (d), Government Code, are amended to read as follows:

(a) The department [commission] shall develop a system of billings and charges for services provided in operating and administering the consolidated telecommunications system that allocates the total state cost to each entity served by the system based on proportionate usage.

(c) To provide an adequate cash flow as necessary for purposes of this chapter, using state agencies and other entities, on proper notification, shall make monthly payments into the telecommunications revolving fund account from appropriated or other available money. The legislature may appropriate money for operating the system directly to the department [commission], in which case the revolving fund account shall be used to receive money due from local governmental entities and other agencies to the extent that their money is not subject to legislative appropriation.

(d) The department [~~commission~~] shall maintain in the revolving fund account sufficient amounts to pay the bills of the consolidated telecommunications system and the centralized capitol complex telephone system. The department [~~commission~~] shall certify amounts that exceed this amount to the comptroller, and the comptroller shall transfer the excess amounts to the credit of the statewide network applications account established by Section 2054.011 [~~22A, Information Resources Management Act (Article 4413(32j), Revised Statutes)~~].

SECTION 4.27. Sections 2170.058(b) and (c), Government Code, are amended to read as follows:

(b) The department [~~commission~~] shall adopt rules that govern student access to the system, including:

- (1) times of access to the system; and
- (2) the full recovery of actual costs from each student who uses the system.

(c) In consideration of the duties and responsibilities given the department [~~commission~~] under this chapter [~~subtitle~~], it is the policy of this state that a state agency or unit of state government may not provide telecommunications products or services to the general public in competition with private enterprise unless there is a finding that providing the products or services is in the public interest. This subsection does not prohibit students who reside in housing for which institutions of higher education provide telephone service from using service provided under this section.

SECTION 4.28. Section 2170.059, Government Code, is amended to read as follows:

Sec. 2170.059. CENTRALIZED CAPITOL COMPLEX TELEPHONE SYSTEM.

(a) The department [~~commission~~] shall provide centralized telephone service for state agencies, each house of the legislature, and legislative agencies in the capitol complex. State agencies in the capitol complex shall use the service. Each house of the legislature and each legislative agency shall use the service at the discretion of the legislature. The department [~~commission~~] may provide the service to other state agencies that subscribe to it.

(b) Each using entity shall make monthly payments to the department [~~commission~~] when billed by the department [~~commission~~].

(c) Each using entity may arrange for its own terminal telephone equipment, but the equipment must be compatible with the centralized telephone service. The department [~~commission~~] shall make terminal equipment available for using entities that choose to use that terminal equipment.

(d) The department [~~commission~~] annually shall prepare and issue a revised centralized telephone service directory not later than March 31.

SECTION 4.29. Subchapter B, Chapter 2170, Government Code, is amended by adding Section 2170.060 to read as follows:

Sec. 2170.060. QUARTERLY REPORT. The department shall quarterly submit a report to the telecommunications planning and oversight council on:

(1) the department's accomplishment of service objectives and other performance measures;

(2) the financial performance of the consolidated telecommunications system and the centralized capitol complex telephone system; and

(3) the status of projects for the consolidated telecommunications system and the centralized capitol complex telephone system.

SECTION 4.30. Section 2054.091(e), Government Code, is repealed.

SECTION 4.31. Section 2170.007, Government Code, is repealed.

SECTION 4.32. (a) The telecommunications planning group is abolished.

(b) The governor, the lieutenant governor, the speaker of the house of representatives, the comptroller of public accounts, the executive director of the Texas Procurement Commission, the commissioner of higher education, the chancellor of The University of Texas System, and the chancellor of The Texas A&M University System shall make appointments to the telecommunications planning and oversight council in accordance with Section 2054.201, Government Code, as amended by this Act, as soon as possible after September 1, 2001.

(c) Any powers, duties, rights, contracts, appropriations, property, and records of the telecommunications planning group are transferred to the telecommunications planning and oversight council as created by this Act.

(d) A rule, policy, plan, waiver, standard, requirement, or guideline of the telecommunications planning group continues in effect as a rule, policy, plan, waiver, standard, requirement, or guideline of the telecommunications planning and oversight council until it is superseded by an act of the telecommunications planning and oversight council as created by this Act or until it expires according to its terms or by operation of law.

(e) The validity of a rule, policy, plan, requirement, guideline, or procedure adopted, waiver granted, contract or acquisition made, obligation incurred, right accrued, or other action taken by or in connection with the authority of the telecommunications planning group before it is abolished under Subsection (a) of this section is not affected by the abolishment.

SECTION 4.33. The telecommunications planning and oversight council shall issue the first annual report required under Section 2054.206, Government Code, as amended by this Act, not later than September 1, 2002.

ARTICLE 5. STATEWIDE CONTRACT MANAGEMENT

SECTION 5.01. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2262 to read as follows:

CHAPTER 2262. STATEWIDE CONTRACT MANAGEMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2262.001. DEFINITIONS. In this chapter:

(1) "Team" means the Contract Advisory Team created under Subchapter C.

(2) "Contract management guide" means the guide developed under Section 2262.051.

(3) "Contract manager" means a person who:

(A) is employed by a state agency; and

(B) has significant contract management duties for the state agency, as determined by the agency in consultation with the state auditor.

(4) "Major contract" means a contract that has a value of at least \$1 million.

(5) "State agency" has the meaning provided by Section 2056.001.

Sec. 2262.002. EXEMPTIONS. (a) This chapter does not apply to an institution of higher education as defined by Section 61.003, Education Code.

(b) Any provisions of this chapter regarding the solicitation of contracts do not apply to the Texas Department of Transportation.

[Sections 2262.003-2262.050 reserved for expansion]

SUBCHAPTER B. CONTRACT MANAGEMENT

Sec. 2262.051. CONTRACT MANAGEMENT GUIDE; RULES. (a) In consultation with the Texas Procurement Commission, the Department of Information Resources, the comptroller, and the state auditor, the attorney general shall develop and periodically update a contract management guide for use by state agencies.

(b) The attorney general may adopt rules necessary to develop the guide.

(c) The guide must provide information regarding the primary duties of a contract manager, including how to:

(1) develop and negotiate a contract;

(2) select a contractor; and

(3) monitor contractor and subcontractor performance under a contract.

(d) The guide must include model provisions for state agency contracts. The guide must:

(1) distinguish between essential provisions that a state agency must include in a contract to protect the interests of this state and recommended provisions that a state agency may include in a contract;

(2) recognize the unique contracting needs of an individual state agency or program and provide sufficient flexibility to accommodate those needs, consistent with protecting the interests of this state; and

(3) include maximum contract periods under which a new competitive solicitation is not necessary.

(e) The guide must recommend time frames under which a state agency may issue a competitive solicitation for a major contract in relation to the date on which the contract is to be executed.

(f) The guide must establish procedures by which a state agency is required to consult with the team before issuing a solicitation for a major contract. The procedures must establish a process under which the team is required to review and comment on whether to proceed with the solicitation or execute the contract. As detailed in the procedures, the team may recommend that the agency use the services of the attorney general or private counsel or of private consultants who are experts in any technical matter that is the subject of the major contract.

(g) The guide must establish procedures under which a state agency is required to solicit explanations from qualified potential respondents who did not respond to a competitive solicitation for a contract on which fewer than two qualified bids were received by the agency.

Sec. 2262.052. COMPLIANCE WITH GUIDE. (a) Each state agency shall comply with the contract management guide.

(b) The state auditor shall:

(1) periodically monitor compliance with this section;

(2) report any noncompliance to:

(A) the governor;

(B) the lieutenant governor;

(C) the speaker of the house of representatives; and

(D) the team; and

(3) assist, in coordination with the attorney general and the comptroller, a noncomplying state agency to comply with this section.

Sec. 2262.053. TRAINING. (a) In coordination with the Texas Procurement Commission, the comptroller, and the Department of Information Resources, the state auditor shall develop a training program for contract managers.

(b) The training must provide the contract manager with information regarding how to:

(1) fairly and objectively select and negotiate with the most qualified contractor;

(2) establish prices that are cost-effective and that reflect the cost of providing the service;

(3) include provisions in a contract that hold the contractor accountable for results;

(4) monitor and enforce a contract;

(5) make payments consistent with the contract; and

(6) comply with any requirements or goals contained in the contract management guide.

(c) Each state agency shall ensure that the agency's contract managers complete the training developed under this section.

Sec. 2262.054. PUBLIC COMMENT. The attorney general by rule may establish procedures by which each state agency is required to invite public comment by publishing the proposed technical specifications for major contracts on the Internet through the information service known as the Texas Marketplace or through a suitable successor information service. The guide must define "technical specifications."

[Sections 2262.055-2262.100 reserved for expansion]

SUBCHAPTER C. CONTRACT ADVISORY TEAM

Sec. 2262.101. CREATION; DUTIES. The Contract Advisory Team is created to assist state agencies in improving contract management practices by:

(1) reviewing the solicitation of major contracts by state agencies;

(2) reviewing any findings or recommendations made by the state auditor, including those made under Section 2262.052(b), regarding a state agency's compliance with the contract management guide; and

(3) providing recommendations to:

(A) the attorney general regarding the development of the contract management guide; and

(B) the state auditor regarding the training under Section 2262.053.

Sec. 2262.102. MEMBERS. (a) The team consists of the following five members:

(1) one member from the attorney general's office;

(2) one member from the comptroller's office;

(3) one member from the Department of Information Resources;

(4) one member from the Texas Procurement Commission; and

(5) one member from the governor's office.

(b) The Legislative Budget Board and the state auditor shall provide technical assistance to the team.

Sec. 2262.103. PERSONNEL. Each agency or officer with representation on the team shall provide, at the request of the team, staff to assist the team in carrying out its duties under this chapter.

SECTION 5.02. Section 2056.002(b), Government Code, is amended to read as follows:

(b) The Legislative Budget Board and the Governor's Office of Budget and Planning shall determine the elements required to be included in each agency's strategic plan. Unless modified by the Legislative Budget Board and the Governor's Office of Budget and Planning, and except as provided by Subsection (c), a plan must include:

- (1) a statement of the mission and goals of the state agency;
- (2) a description of the indicators developed under this chapter and used to measure the output and outcome of the agency;
- (3) identification of the groups of people served by the agency, including those having service priorities, or other service measures established by law, and estimates of changes in those groups expected during the term of the plan;
- (4) an analysis of the use of the agency's resources to meet the agency's needs, including future needs, and an estimate of additional resources that may be necessary to meet future needs;
- (5) an analysis of expected changes in the services provided by the agency because of changes in state or federal law;
- (6) a description of the means and strategies for meeting the agency's needs, including future needs, and achieving the goals established under Section 2056.006 for each area of state government for which the agency provides services;
- (7) a description of the capital improvement needs of the agency during the term of the plan and a statement, if appropriate, of the priority of those needs;
- (8) identification of each geographic region of this state, including the Texas-Louisiana border region and the Texas-Mexico border region, served by the agency, and if appropriate the agency's means and strategies for serving each region;
- (9) a description of the training of the agency's contract managers under Section 2262.053; and
- (10) ~~(9)~~ other information that may be required.

SECTION 5.03. Not later than March 1, 2002, the members of the Contract Advisory Team created under Section 2262.101, Government Code, as added by this Act, shall be designated by the appropriate state agency or officer.

SECTION 5.04. Not later than March 1, 2002, the attorney general shall complete the contract management guide required by Section 2262.051, Government Code, as added by this Act.

SECTION 5.05. (a) In this section:

- (1) "Team" means the Contract Advisory Team created under Subchapter C, Chapter 2262, Government Code, as added by this Act.
- (2) "Major contract" has the meaning provided by Section 2262.001, Government Code, as added by this Act.
- (3) "Solicitation" includes an invitation for bid, request for proposal, request for offer, request for quote, or other method for soliciting contracts in this state.
- (4) "State agency" has the meaning provided by Section 2056.001, Government Code.

(b) Not later than March 1, 2002, each state agency shall provide the team:

- (1) a list of all major contracts entered into by the agency for which a competitive bid was solicited before September 1, 1998; and
- (2) a plan for issuing new solicitations for those contracts not later than September 1, 2003.

(c) The team may review and comment on the plan submitted under Subsection (b) of this section.

SECTION 5.06. Not later than December 31, 2002, one contract manager designated by each state agency must have received the training required by Section 2262.053(c), Government Code, as added by this Act.

SECTION 5.07. (a) Except as provided by Subsections (b) and (c) of this section, this article takes effect September 1, 2001.

(b) Section 2262.052(a), Government Code, as added by this Act, takes effect January 1, 2003. A state agency may comply with Section 2262.052(a) before its effective date.

(c) A state agency is not required to comply with Section 2056.002(b)(9), Government Code, as added by this Act, until June 1, 2004.

ARTICLE 6. COMMERCIALLY AVAILABLE ACTIVITIES

SECTION 6.01. Subtitle D, Title 10, Government Code, is amended by adding Chapter 2163 to read as follows:

CHAPTER 2163. COMMERCIALLY AVAILABLE ACTIVITIES

Sec. 2163.001. DEFINITION. In this chapter, "commission" means the Texas Procurement Commission.

Sec. 2163.002. REVIEW PROCESS. (a) The commission shall develop a systematic review process to identify commercially available services being performed by the commission and study the services to determine if they may be better provided by other state agency providers of the services or private commercial sources.

(b) In reviewing its services, the commission shall:

(1) determine whether competitive vendors exist in the private sector;

(2) compare the cost of contracting for the services from other state agency providers of the services or private commercial sources to the commission's cost of performing the services; and

(3) document cost savings from contracting for the services from other state agency providers of the services or private commercial sources.

(c) Each commercially available service performed by the commission shall be reviewed at least once every six years.

(d) The commission shall consult with the State Council on Competitive Government as necessary in planning and conducting its reviews under this subchapter.

Sec. 2163.003. COST COMPARISON AND CONTRACT CONSIDERATIONS.

(a) The commission shall consider all of its direct and indirect costs in determining the cost of providing a service.

(b) In comparing the cost of providing a service, the commission must include the:

(1) cost of supervising the work of a private contractor; and

(2) cost to the state of the commission's performance of the service, including:

(A) the costs of the office of the attorney general and other support agencies; and

(B) other indirect costs related to the commission's performance of the service.

Sec. 2163.004. CONTRACTING WITH ANOTHER STATE AGENCY OR PRIVATE SOURCE. (a) If the commission determines that a service can be performed with a comparable or better level of quality at a savings to the state of at

least 10 percent by using other state agency providers of the service or a private commercial source, the commission may contract with other state agency providers of the services or private commercial sources for the service.

(b) The commission maintains responsibility for providing a contracted service and shall set measurable performance standards for a contractor.

Sec. 2163.005. PROHIBITION. The commission may not begin providing a service the General Services Commission did not provide as of September 1, 2001, unless, after conducting an in-depth analysis on cost in accordance with Section 2163.003 and on availability of a service, the commission determines that it can perform the service at a higher level of quality or at a lower cost than other state agency providers of the service or private commercial sources.

ARTICLE 7. ELECTRONIC COMMERCE; TRAVEL

SECTION 7.01. Section 2155.062(a), Government Code, is amended to read as follows:

(a) In purchasing goods and services the commission may use, but is not limited to, the:

- (1) contract purchase procedure;
- (2) multiple award contract procedure, including under any schedules developed under Subchapter I; [or]
- (3) open market purchase procedure; or
- (4) reverse auction procedure.

SECTION 7.02. Sections 2155.083(c), (d), (f), (k), and (l), Government Code, are amended to read as follows:

(c) The commission [department] each business day shall produce and post a business daily in an electronic format. The commission [department] shall post in the business daily information as prescribed by this section about each state agency procurement that will exceed \$25,000 in value. The commission [department] shall also post in the business daily other information relating to the business activity of the state that the commission [department] considers to be of interest to the public.

(d) The commission [department] shall make the business daily available on the Internet [~~through its information service known as the Texas Marketplace or through a suitable successor information service that will make the information available on the Internet~~]. Each [The department and each] state agency shall cooperate with the commission in making the electronic business daily available.

(f) The commission [department] and other state agencies may not charge a fee designed to recover the cost of preparing and gathering the information that is published in the business daily. These costs are considered part of a procuring agency's responsibility to publicly inform potential bidders or offerors of its procurement opportunities.

(k) Each state agency that will award a procurement contract estimated to exceed \$25,000 in value shall send to the commission [department]:

- (1) the information the commission [department] requires for posting in the state business daily under this section; and
- (2) a notice when the procurement contract has been awarded or when the state agency has decided to not make the procurement.

(l) The commission [department] may adopt rules, prescribe forms, and require information to administer this section. The commission [department] shall send any proposed rules to the governor, Legislative Budget Board, comptroller, and state

auditor [~~and commission~~] for review and comment. The commission's [department's] rules shall require that each state agency [~~to the extent feasible;~~] shall directly and electronically post its own notices or solicitation packages under Subsections (g) and (h).

SECTION 7.03. Sections 2156.003(a) and (b), Government Code, are amended to read as follows:

(a) The commission shall electronically maintain a bidders list that is integrated into the electronic procurement marketplace established by the Department of Information Resources. If the commission determines that it is in the state's best interest, the commission may also maintain the list on paper. The commission may [and] add or delete names from the list according to applicable standards provided by Section 2156.007.

(b) In addition to any requirements of Chapter 2177, an [An] invitation to bid on an item to be purchased may be sent electronically [only] to a vendor on the bidders list who has expressed a desire to bid on that type of item.

SECTION 7.04. Section 2171.052, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The commission shall maintain at least one contract with a provider of travel services that offers reservation and ticketing services in person or by telephone.

SECTION 7.05. Subchapter B, Chapter 2171, Government Code, is amended by adding Section 2171.0521 to read as follows:

Sec. 2171.0521. ONLINE RESERVATION AND TICKETING CAPABILITY.

(a) The Department of Information Resources, in consultation with the commission, shall establish and manage the electronic infrastructure of an online travel reservation and ticketing capability for use by state agencies participating in the commission's contracts for travel services. The commission shall manage and administer the content of the online travel reservation and ticketing capability. The Department of Information Resources, in consultation with the commission, shall enter into contracts with private or public entities to establish a secure means by which a state employee traveling on state business may electronically participate in the commission's contracts for travel services. The Department of Information Resources shall attempt to establish an online capability that connects to the online reservation or ticketing systems of providers of travel services. Reservations must be made with a state-issued credit card or other form of payment authorized by the commission.

(b) The preference in Section 2171.052(c) for a resident entity of this state does not apply to this section.

(c) A state agency may use the online reservation and ticketing capability to make travel reservations for a state employee traveling on state business.

SECTION 7.06. Chapter 2177, Government Code, is amended to read as follows:

CHAPTER 2177. ELECTRONIC COMMERCE
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2177.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Procurement Commission.

(2) "Department" means the Department of Information Resources.

(3) "Electronic procurement system" means the electronic system for procuring goods and services consisting of the electronic procurement marketplace created under Subchapter B and the electronic commerce network created under Subchapter C.

Sec. 2177.002. SMALL AND HISTORICALLY UNDERUTILIZED BUSINESSES. The commission and the department shall ensure that small and historically underutilized businesses have maximum access to electronic commerce opportunities.

Sec. 2177.003. CONSULTATION. The commission, at least quarterly, shall consult with the following entities to ensure that the electronic procurement system meets the needs of users of the system:

- (1) the department;
- (2) the state auditor;
- (3) groups, including coordinating councils, created by the commission to assist with electronic commerce initiatives;
- (4) the vendor advisory committee established under Section 2155.081; and
- (5) other state agencies and local governments that use the system.

Sec. 2177.004. INTERFACE WITH TEXAS ONLINE. (a) The department, with the assistance of the commission, shall assess whether all or parts of the electronic procurement system should interface with the project known as Texas Online that is a continuation of the demonstration project authorized by Section 2054.062 as enacted by the 76th Legislature.

(b) Based on the assessment, the department and the commission may interface all or parts of the electronic procurement system with Texas Online or use features of Texas Online to enhance the electronic procurement system.

SUBCHAPTER B. ELECTRONIC PROCUREMENT MARKETPLACE

Sec. 2177.051. ELECTRONIC PROCUREMENT MARKETPLACE. (a) The department [~~commission~~] shall establish and manage the electronic infrastructure of an electronic procurement marketplace. The commission shall manage and administer the content of the electronic procurement marketplace in accordance with this subtitle. The department or commission, as appropriate, may enter into contracts with private or public entities to establish or maintain all or part of the databases comprising the marketplace, to the extent feasible, including contracts to procure hardware or software. The department or commission, as appropriate, shall procure all goods and services related to the marketplace through a competitive selection process appropriate for the good or service being acquired.

(b) The commission, in consultation with the department [~~Department of Information Resources~~], shall define standards, including keyword and product code standards, for the electronic procurement marketplace. The marketplace may contain:

- (1) information relevant to the state's standard procurement specifications for goods and services;
- (2) information about vendors, including [~~information from the centralized master bidders list and~~] vendor performance information;
- (3) information about products, including product testing results;
- (4) historical purchasing information, qualified purchase lists, and trends; [~~and~~]
- (5) information about the availability of surplus property; and
- (6) information about recycled, remanufactured, or environmentally sensitive commodities or services, including commodities or services identified under Section 2155.448.

(c) The commission shall integrate the business daily into the electronic procurement marketplace.

(d) ~~The department [commission]~~ may adopt rules relating to the design and use of the electronic procurement marketplace that concern the technical requirements of the marketplace. The commission may adopt rules relating to the use of the marketplace for its intended purpose, including rules that require state agencies to provide information for or receive information from the marketplace. The department and the commission shall consult in adopting rules under this subsection.

(e) ~~[(f)]~~ The commission may make state procurement information available to political subdivisions through the electronic procurement marketplace on a fee-for-service basis. The commission shall set the fees in an amount that recovers the state's costs in providing the access to a political subdivision.

(f) ~~[(e)]~~ Before developing a contract for the procurement of a good or service, a state agency shall [may] use the electronic procurement marketplace as prescribed by this chapter and commission rules ~~[to determine the most appropriate method for acquiring the good or service].~~

(g) ~~[(f)]~~ The marketplace may contain:

(1) information relevant to the state's standard procurement specifications for goods and services;

(2) information about vendors, including ~~[information from the centralized master bidders list and]~~ vendor performance information;

(3) information about products, including product testing results; and

(4) historical purchasing information, qualified purchase lists, and trends.

(h) ~~[(g)]~~ The department or commission may require information from a state agency for inclusion in the electronic procurement marketplace.

SUBCHAPTER C. ELECTRONIC COMMERCE NETWORK

Sec. 2177.101. EXCEPTIONS. (a) This subchapter does not apply to procurements for major construction projects, as defined by the commission in consultation with the department, such as procurements made under Chapter 223, Transportation Code. In defining a major construction project, the commission shall base its decision on whether the nature of the project, any related contract or specifications, or other considerations are of a type that would make electronic procurement inappropriate.

(b) The exceptions listed under Section 2166.003(a) apply as exceptions to this subchapter.

Sec. 2177.102 [2177-002]. ELECTRONIC COMMERCE NETWORK. (a) The department shall establish and manage the electronic infrastructure of an electronic commerce network. The commission shall [establish and] manage and administer the content of the electronic commerce network. The [an] electronic commerce network, to the extent feasible, shall allow [under which] the state's purchasing transactions with vendors to [can] be accomplished electronically by means of facsimile transmissions and on-line transmission of necessary information. [The commission shall comply with applicable rules of the Department of Information Resources to the extent that they are based on the standard data protocol developed by the American National Standards Institute known as electronic data interchange or on other efficient standards as determined by the commission:]

(b) The department or commission, as appropriate, may enter into contracts with one or more public or private entities to establish or support various elements of the network. The department or commission, as appropriate, shall procure all goods and services related to the network through the competitive selection process appropriate for the good or service being acquired.

(c) The department, in consultation with the commission, may provide for a gateway between the electronic procurement marketplace and the electronic commerce network so that the elements of a procurement transaction that are within state government and the elements of a procurement transaction that involve communication with a vendor may all be accomplished electronically.

(d) Each state agency [~~that is capable of participating in the electronic commerce network~~] must participate in the network and participate in contracts entered into by the department or the commission for the establishment or support of the network. The department [~~commission~~] shall charge an agency a fee for network services provided to the agency by the department [~~commission~~] or by a contractor so that the cost of providing network services to an agency is paid by the agency.

(e) The commission may allow political subdivisions and other public entities that are members of the commission's cooperative purchasing program to participate in the electronic commerce network. The department [~~commission~~] shall require that a participating political subdivision or other entity is charged a fee for the network services in the same manner that participating state agencies are charged fees under Subsection (d).

(f) The commission may also charge private businesses a fee for accessing the network.

(g) The department may adopt rules to administer this section that concern the technical requirements of the network. The commission may:

(1) adopt rules relating to the use of the network for its intended purpose [~~to administer this section~~]; and

(2) require participating state agencies, political subdivisions, and other public entities to designate a network coordinator.

(h) The department and the commission shall consult in adopting rules under this section.

(i) The requirements of this subchapter [~~section and Section 2177.003~~] are in addition to the requirements of other law relating to the solicitation of bids, proposals, or expressions of interest for a procurement by the commission or another state agency. This subchapter does [~~section and Section 2177.003 do~~] not affect any other law that requires the commission or another state agency to award a procurement contract through competitive bidding, competitive sealed proposals, or another method.

Sec. 2177.103 [~~2177.003~~]. PARTICIPATION BY STATE AGENCIES IN ELECTRONIC COMMERCE NETWORK. (a) Each state agency shall send to the commission for posting on the electronic commerce network information on each procurement contract the commission, in consultation with the department, determines is appropriate for electronic procurement [~~the value of which will exceed the amount of the agency's delegated purchasing authority under Section 2155.132~~]:

(1) without regard to the source of funds the agency will use for the procurement; and

(2) including a procurement that is:

(A) a procurement by a state agency that is otherwise exempt from the commission's purchasing authority;

(B) made under delegated purchasing authority under Section 2155.131; or

(C) [~~related to a construction project; or~~

[(D)] a procurement of professional or consulting services.

(b) The commission and each state agency shall include in the information placed on the electronic commerce network~~[, to the extent it is feasible,]~~ the following information for each procurement that the commission will make or that another state agency will make under Subsection (a):

- (1) a description of the goods or services to be procured;
- (2) the estimated quantity of the goods or services to be procured;
- (3) if applicable, the previous price paid by the commission or another state agency for the same or similar goods or services;
- (4) the estimated date on which the goods or services to be procured will be needed; and
- (5) the name, business mailing address, and business telephone number of the commission employee or other state agency employee a person can contact to obtain all necessary information relating to making a bid or proposal or other applicable expression of interest for the procurement contract.

(c) The commission shall also post on the electronic commerce network other information relating to the business activity of the state that the commission considers to be of interest to the public. Each state agency shall provide the commission with information the commission requires for purposes of this subsection in a format prescribed by the commission.

(d) Each state agency that will award a contract that has been placed on the electronic commerce network under Subsection (a) shall place notification of the awarding of the contract on the electronic commerce network.

SECTION 7.07. Section 2155.083(b), Government Code, is repealed.

SECTION 7.08. On October 1, 2001:

(1) all functions and activities performed by the Texas Department of Economic Development relating to the business daily under Chapter 2155, Government Code, or other law immediately before that date are transferred to the Texas Procurement Commission;

(2) a rule or form adopted by the Texas Department of Economic Development that relates to the business daily under Chapter 2155, Government Code, or other law is a rule or form of the commission and remains in effect until altered by the commission;

(3) a reference in law to the Texas Department of Economic Development that relates to the business daily under Chapter 2155, Government Code, or other law means the commission;

(4) all rights and obligations of the Texas Department of Economic Development related to the business daily under Chapter 2155, Government Code, or other law are transferred to the commission; and

(5) all property, including records, in the custody of the Texas Department of Economic Development related to the business daily under Chapter 2155, Government Code, or other law is transferred to the commission.

SECTION 7.09. The Department of Information Resources shall have the online reservation and ticketing capability created under Section 2171.0521, Government Code, as added by this Act, fully operational by September 1, 2002.

ARTICLE 8. STATE CEMETERY

SECTION 8.01. Section 2165.256(a), Government Code, is amended to read as follows:

(a) The State Cemetery Committee shall oversee all operations of the State Cemetery. The committee shall develop a budget for the operations of the commission

relating to the State Cemetery and determine the salary of employees of the Texas building division of the State Preservation Board whose duties primarily relate to the operation of the State Cemetery.

SECTION 8.02. Section 2165.2561, Government Code, is amended by amending Subsections (a), (k), and (l) and adding Subsections (n)-(u) to read as follows:

(a) The State Cemetery Committee is composed of:

(1) three voting members appointed as follows:

(A) one member of the general public appointed by the governor;

(B) one member of the general public appointed by the governor from a list submitted by the lieutenant governor; and

(C) one member of the general public appointed by the governor from a list submitted by the speaker of the house of representatives; and

(2) three nonvoting advisory members appointed as follows:

(A) one employee of the Texas Historical Commission appointed by the executive director of the Texas Historical Commission;

(B) one employee of the State Preservation Board who performs duties related to the functions of the commission and is ~~[General Services Commission]~~ appointed by the executive director of the State Preservation Board ~~[General Services Commission]~~; and

(C) one employee of the Parks and Wildlife Department appointed by the executive director of the Parks and Wildlife Department.

(k) The legislature shall separately appropriate money to the committee within the appropriations to the State Preservation Board for all matters relating to the operation of the State Cemetery. ~~[At the direction of the committee, the General Services Commission shall spend money appropriated to or budgeted by the General Services Commission for State Cemetery purposes.]~~ Activities relating to maintenance of the State Cemetery grounds and monuments shall conform to guidelines for historic preservation submitted to the committee by the Texas Historical Commission.

(l) Funds appropriated to the State Preservation Board ~~[General Services Commission]~~ may be transferred by interagency contract for the performance of, at the direction of the committee, an act related to the State Cemetery.

(n) It is a ground for removal from the committee that a member:

(1) does not have at the time of taking office the qualifications required by Subsection (a);

(2) does not maintain during service on the committee the qualifications required by Subsection (a);

(3) is ineligible for membership under Subsection (g) or (h);

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the committee.

(o) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

(p) If the executive director of the State Preservation Board has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the committee of the potential ground. The presiding officer shall then notify

the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the committee, who shall then notify the governor and the attorney general that a potential ground for removal exists.

(q) The executive director of the State Preservation Board or the executive director's designee shall provide to members of the committee, as often as necessary, information regarding the requirements for office under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

(r) A person who is appointed to and qualifies for office as a member of the committee may not vote, deliberate, or be counted as a member in attendance at a meeting of the committee until the person completes a training program that complies with this subsection. The training program must provide the person with information regarding:

(1) the legislation that created the State Cemetery and the State Cemetery Committee;

(2) the programs operated by the committee;

(3) the role and functions of the committee;

(4) the rules of the committee, with an emphasis on any rules that relate to disciplinary and investigatory authority;

(5) the current budget for the committee;

(6) the results of the most recent formal audit of cemetery operations;

(7) the requirements of:

(A) the open meetings law, Chapter 551;

(B) the public information law, Chapter 552;

(C) the administrative procedure law, Chapter 2001; and

(D) other laws relating to public officials, including conflict-of-interest

laws; and

(8) any applicable ethics policies adopted by the commission, the committee, or the Texas Ethics Commission.

(s) A person appointed to the committee is entitled to reimbursement, as provided by Chapter 660 and the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(t) The committee shall develop and implement policies that clearly separate the policymaking responsibilities of the committee and the management responsibilities of the executive director of the State Preservation Board and staff of the cemetery.

(u) The committee shall develop and implement policies that provide the public with a reasonable opportunity to appear before the committee and to speak on any issue under the jurisdiction of the committee.

SECTION 8.03. (a) The changes in law made by this Act in the prohibitions and qualifications applying to members of the State Cemetery Committee do not affect the entitlement of a member serving on the committee immediately before September 1, 2001, to continue to serve and function as a member of the committee for the remainder of the member's term. The changes in law apply only to a member appointed on or after September 1, 2001. This Act does not prohibit a person who is a member of the State Cemetery Committee immediately before September 1, 2001, from being reappointed as a committee member if the person has the qualifications

required for the position under Chapter 2165, Government Code, as amended by this Act.

(b) Section 2165.2561(r), Government Code, as added by this Act, does not apply to a member of the State Cemetery Committee until March 1, 2002.

SECTION 8.04. The changes in law made by this Act to Section 2165.2561(k), Government Code, apply beginning with the fiscal year beginning on September 1, 2003.

ARTICLE 9. CONTRACTING METHODS FOR CONSTRUCTION OF STATE FACILITIES

SECTION 9.01. Subchapter F, Chapter 2166, Government Code, is amended by adding Section 2166.2511 to read as follows:

Sec. 2166.2511. DEFINITIONS. In this subchapter:

(1) "Architect" means an individual registered as an architect under Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes).

(2) "Contractor" in the context of a contract for a project means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for constructing, rehabilitating, altering, or repairing all or part of the project at the contracted price.

(3) "Engineer" means an individual registered as a professional engineer under The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes).

(4) "Facility" means buildings or structures the design and construction of which is governed by accepted building codes. The term does not include:

(A) highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction; or

(B) buildings or structures that are incidental to projects that are primarily civil engineering construction projects.

(5) "Fee" in the context of a contract for a project means the payment a construction manager receives for its overhead and profit in performing its services.

(6) "General conditions" in the context of a contract for a project means on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials.

SECTION 9.02. Subchapter F, Chapter 2166, Government Code, is amended by adding Section 2166.2525 to read as follows:

Sec. 2166.2525. DETERMINATION OF CONTRACTING METHOD. The commission shall adopt rules that determine the circumstances for use of each method of contracting allowed under this subchapter for design and construction services. In developing the rules, the commission shall solicit advice and comment from design and construction professionals regarding the criteria the commission will use in determining which contracting method is best suited for a project.

SECTION 9.03. Subchapter F, Chapter 2166, Government Code, is amended by adding Section 2166.2526 to read as follows:

Sec. 2166.2526. EVALUATION OF BIDS AND PROPOSALS FOR CONSTRUCTION SERVICES. (a) For each project, the commission must, before

advertising, establish which method of contracting provides the best value for the commission or using agency.

(b) Under each method of contracting, the commission shall base its selection among the offerors on criteria established by the commission. The commission shall publish in the request for bids, proposals, or qualifications all of the criteria that will be used to evaluate the offerors.

(c) The commission shall document the basis of its selection of an offeror and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

SECTION 9.04. Section 2166.253, Government Code, is amended to read as follows:

Sec. 2166.253. LOWEST AND BEST BID METHOD [BIDDING PROCEDURES]. (a) The commission may use the lowest and best bid method for a project. In using that method, the commission shall follow the procedures provided by Subsections (b)-(g).

(b) After final approval of a project's working plans and specifications and their acceptance by a using agency, the commission shall advertise in one newspaper of general circulation and the Texas Register for bids or proposals for the construction of and related work on the project.

(c) [~~(b)~~] Except as provided by Subsection (d) [~~(c)~~], the commission shall allow bidders not less than 30 days after the date the commission issues the bid documents to respond to an invitation to bid.

(d) [~~(c)~~] The commission shall allow bidders for small construction projects not less than 14 days after the date the commission issues the bid documents to respond to an invitation to bid.

(e) [~~(d)~~] The commission may shorten the time for response to prevent undue additional costs to a state agency or, for emergency projects, to prevent or remove a hazard to life or property.

(f) A contract shall be awarded to the qualified bidder making the lowest and best bid in accordance with the law on awarding a state contract.

(g) The commission may reject all bids.

SECTION 9.05. Subchapter F, Chapter 2166, Government Code, is amended by adding Section 2166.2531 to read as follows:

Sec. 2166.2531. DESIGN-BUILD METHOD. (a) In this section:

(1) "Design-build contract" means a single contract with a design-build firm for the design and construction of a facility.

(2) "Design-build firm" means a partnership, corporation, or other legal entity or team that includes an engineer or architect and a builder qualified to engage in building construction in this state.

(3) "Design criteria package" means a set of documents that provides sufficient information to permit a design-build firm to prepare a response to the commission's request for qualifications and any additional information requested, including criteria for selection. The design criteria package must specify criteria the commission considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, or any other requirement, as applicable.

(b) The commission may use the design-build method for a project. In using that method and in entering into a contract for the services of a design-build firm, the commission and the design-build firm shall follow the procedures provided by Subsections (c)-(k).

(c) The commission shall designate an engineer or architect to act as its representative. If the commission's engineer or architect is not a full-time employee of the commission, any engineer or architect designated shall be selected on the basis of demonstrated competence and qualifications in accordance with Subchapter A, Chapter 2254.

(d) The commission shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project. The commission shall also prepare a design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires engineering or architectural services that constitute the practice of engineering within the meaning of The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or the practice of architecture within the meaning of Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), those services shall be provided in accordance with the applicable law.

(e) The commission or its representative shall publish the request for qualifications in a manner prescribed by the commission.

(f)(1) The commission or its representative shall evaluate statements of qualifications and select a design-build firm in two phases.

(2) In phase one, the commission or its representative shall prepare a request for qualifications and evaluate each offeror's experience, technical competence, and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Each offeror must certify to the commission that each engineer or architect that is a member of its team was selected based on demonstrated competence and qualifications. The commission or its representative shall qualify a maximum of five offerors to submit additional information and, if the commission or its representative chooses, to interview for final selection.

(3) In phase two, the commission or its representative shall evaluate the information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview. The commission or its representative may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, costing methodology, or other factors as appropriate. The commission or its representative may not require offerors to submit detailed engineering or architectural designs as part of the proposal. The commission or its representative shall rank each proposal submitted on the basis of the criteria specified in the request for qualifications. The commission or its representative shall select the design-build firm that submits the proposal offering the best value for the commission or using agency on the basis of the published selection criteria and on its ranking evaluations. The commission or its representative shall first attempt to negotiate a

contract with the selected offeror. If the commission or its representative is unable to negotiate a satisfactory contract with the selected offeror, the commission shall, formally and in writing, end all negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(g) Following selection of a design-build firm under Subsection (f), that firm's engineers or architects shall complete the design, submitting all design elements for review and determination of scope compliance by the commission's engineer or architect before or concurrently with the beginning of construction.

(h) An engineer shall have responsibility for compliance with the engineering design requirements and all other applicable requirements of The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes). An architect shall have responsibility for compliance with the requirements of Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes).

(i) The commission shall provide or contract for, independently of the design-build firm, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the commission. The commission shall select those services for which it contracts in accordance with Section 2254.004.

(j) The design-build firm shall supply a signed and sealed set of construction documents for the project to the commission at the conclusion of construction.

(k) A payment or performance bond is not required for, and may not provide coverage for, the portion of a design-build contract under this section that includes design services only. If a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the commission shall each be in an amount equal to the project budget, as specified in the design criteria package. The design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the commission to ensure that the design-build firm will furnish the required performance and payment bonds when a guaranteed maximum price is established.

SECTION 9.06. Subchapter F, Chapter 2166, Government Code, is amended by adding Section 2166.2532 to read as follows:

Sec. 2166.2532. CONSTRUCTION MANAGER-AT-RISK METHOD. (a) The commission may use the construction manager-at-risk method for a project. In using that method and in entering into a contract for the services of a construction manager-at-risk, the commission shall follow the procedures prescribed by this section.

(b) A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the commission regarding construction during and after the design of the facility.

(c) Before or concurrently with selecting a construction manager-at-risk, the commission shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil

Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), as applicable. If the engineer or architect is not a full-time employee of the commission, the commission shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004. The commission's engineer or architect for a project may not serve, alone or in combination with another, as the construction manager-at-risk.

(d) The commission shall provide or contract for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the commission. The commission shall select those services for which it contracts in accordance with Section 2254.004.

(e) The commission shall select the construction manager-at-risk in either a one-step or two-step process. The commission shall prepare a request for proposals, in the case of a one-step process, or a request for qualifications, in the case of a two-step process, that includes general information on the project site, project scope, schedule, selection criteria, estimated budget, and the time and place for receipt of proposals or qualifications, as applicable; a statement as to whether the selection process is a one-step or two-step process; and other information that may assist the commission in its selection of a construction manager-at-risk. The commission shall state the selection criteria in the request for proposals or qualifications, as applicable. The selection criteria may include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk. If a one-step process is used, the commission may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions. If a two-step process is used, the commission may not request fees or prices in step one. In step two, the commission may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and its price for fulfilling the general conditions.

(f) The commission shall publish the request for qualifications in a manner prescribed by the commission.

(g) At each step, the commission shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, the commission shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened. Within 45 days after the date of opening the proposals, the commission or its representative shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

(h) The commission or its representative shall select the offeror that submits the proposal that offers the best value for the commission or using agency based on the published selection criteria and on its ranking evaluation. The commission or its representative shall first attempt to negotiate a contract with the selected offeror. If the commission or its representative is unable to negotiate a satisfactory contract with the selected offeror, the commission or its representative shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(i) A construction manager-at-risk shall publicly advertise, in the manner prescribed by the commission, and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions. A construction manager-at-risk may seek to perform portions of the work itself if the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if the commission determines that the construction manager-at-risk's bid or proposal provides the best value for the commission or using agency.

(j) The construction manager-at-risk and the commission or its representative shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, engineer, architect, or commission. All bids or proposals shall be made public after the award of the contract or within seven days after the date of final selection of bids and proposals, whichever is later.

(k) If the construction manager-at-risk reviews, evaluates, and recommends to the commission a bid or proposal from a trade contractor or subcontractor but the commission requires another bid or proposal to be accepted, the commission shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk may incur because of the commission's requirement that another bid or proposal be accepted.

(l) If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this section, the construction manager-at-risk may, without advertising, itself fulfill the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

(m) If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the commission must each be in an amount equal to the project budget, as set forth in the request for qualifications. The construction manager-at-risk shall deliver the bonds not later than the 10th day after the date the construction manager-at-risk executes the contract unless the construction manager-at-risk furnishes a bid bond or other financial security acceptable to the commission to ensure that the construction manager-at-risk will furnish the required performance and payment bonds when a guaranteed maximum price is established.

SECTION 9.07. Subchapter F, Chapter 2166, Government Code, is amended by adding Section 2166.2533 to read as follows:

Sec. 2166.2533. COMPETITIVE SEALED PROPOSAL METHOD. (a) The commission may select a contractor for a project using the competitive sealed proposal method prescribed by this section.

(b) The commission shall select or designate an engineer or architect to prepare construction documents for the project. The selected or designated engineer or architect has full responsibility for complying with The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), as applicable. If the engineer or architect is not a full-time employee of the commission,

the commission shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004.

(c) The commission shall provide or contract for, independently of the contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the commission. The commission shall select those services for which it contracts in accordance with Section 2254.004 and shall identify them in the request for proposals.

(d) The commission shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria, estimated budget, project scope, schedule, and other information that contractors may require to respond to the request. The commission shall state in the request for proposals all of the selection criteria that will be used in selecting the successful offeror.

(e) The commission shall publish notice of the request for proposals in a manner prescribed by the commission.

(f) The commission shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Within 45 days after the date of opening the proposals, the commission shall evaluate and rank each proposal submitted in relation to the published selection criteria.

(g) The commission shall select the offeror that offers the best value for the commission or using agency based on the published selection criteria and on its ranking evaluation. The commission shall first attempt to negotiate a contract with the selected offeror. The commission and its engineer or architect may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the commission is unable to reach a contract with the selected offeror, the commission shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

(h) In determining the best value for the commission or using agency, the commission is not restricted to considering price alone but may consider any other factor stated in the selection criteria.

SECTION 9.08. Section 2166.255, Government Code, is amended to read as follows:

Sec. 2166.255. AMOUNT [AWARD] OF CONTRACT. ~~[(a) A contract shall be awarded to the qualified bidder making the lowest and best bid in accordance with the law on awarding a state contract.~~

~~[(b) The commission may reject all bids.~~

~~[(c)]~~ A contract may not be awarded for an amount greater than the amount that the comptroller certifies to be available for the project.

SECTION 9.09. (a) The changes in law made by this Act to the General Services Commission's contract procedures apply only to a construction project for which the General Services Commission or the Texas Building Commission first advertises or otherwise solicits bids, proposals, offers, or qualifications, as applicable, on or after September 1, 2001.

(b) A construction project for which the General Services Commission first advertised or otherwise solicited bids, proposals, offers, or qualifications, as applicable, before September 1, 2001, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

ARTICLE 10. LEASING OF STATE OFFICE SPACE

SECTION 10.01. Subchapter A, Chapter 2167, Government Code, is amended by adding Section 2167.0021 to read as follows:

Sec. 2167.0021. BEST VALUE STANDARD FOR LEASE OF SPACE. (a) The commission shall lease space for the use of a state agency on the basis of obtaining the best value for the state.

(b) The commission shall adopt rules establishing guidelines for the determination of best value in a lease contract. In determining the best value, the commission may consider:

- (1) the cost of the lease contract;
- (2) the condition and location of lease space;
- (3) utility costs;
- (4) access to public transportation;
- (5) parking availability;
- (6) security;
- (7) telephone service availability;
- (8) indicators of probable lessor performance under the contract, such as the lessor's financial resources and the lessor's experience;
- (9) compliance with the architectural barriers law, Article 9102, Revised Statutes; and
- (10) other relevant factors.

(c) This section does not prohibit the commission from leasing space from the offeror that offers the space at the lowest cost if the commission determines that doing so obtains the best value for the state.

SECTION 10.02. Section 2167.003, Government Code, is amended to read as follows:

Sec. 2167.003. FIRST CONSIDERATION TO HISTORIC STRUCTURE. (a) In leasing space for the use of a state agency, the commission or the private brokerage or real estate firm assisting the commission shall give first consideration to a building that is designated as a historic structure under Section 442.001 or to a building that has been designated a landmark by a local governing authority, if:

- (1) the building meets requirements and specifications; and
- (2) the cost is not substantially higher than the cost for other available buildings that meet requirements and specifications.

(b) When it considers leasing space for a state agency, the commission or the private brokerage or real estate firm assisting the commission shall notify each individual and organization that is:

- (1) on a list furnished to the commission by the Texas Historical Commission under Section 442.005; and
- (2) in the county in which the commission is considering leasing space.

(c) At the end of a biennium, the commission shall report to the legislature the commission's reasons for rejecting during the biennium the lease of any historic structure that was offered as [in a bid to] lease space to the state.

SECTION 10.03. Section 2167.005, Government Code, is amended to read as follows:

Sec. 2167.005. DELEGATION OF AUTHORITY TO STATE AGENCIES [INSTITUTIONS OF HIGHER EDUCATION]. (a) The commission may delegate to a state agency, including an institution of higher education, the authority to enter into lease contracts for space [for which payments are not made from money appropriated from the general revenue fund].

(b) Any reports on the lease contracts made ~~[by an institution of higher education]~~ under this delegated authority shall be required annually.

SECTION 10.04. Section 2167.006(b), Government Code, is amended to read as follows:

(b) A state agency, including an [An] institution of higher education, may not enter a lease contract under Section 2167.005 unless the agency [institution] complies with the architectural barriers law, Article 9102, Revised Statutes.

SECTION 10.05. Section 2167.052, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Space may be leased from a private source through:

(1) competitive bidding; ~~[or]~~

(2) competitive sealed proposals under Section 2167.054; or

(3) direct negotiation.

(c) The commission shall use the method for leasing space that provides the best value for the state.

SECTION 10.06. Sections 2167.053(a) and (c), Government Code, are amended to read as follows:

(a) When space is leased through competitive bidding, the commission shall determine the ~~[lowest and best]~~ bid that provides the best value for the state after considering moving costs, the cost of time lost in moving, the cost of telecommunications services, and other relevant factors.

(c) If, after review of the bids and evaluation of all relevant factors, the leasing state agency's opinion is that the bid selected by the commission is not the ~~[lowest and best]~~ bid that provides the best value for the state, it may file with the commission a written recommendation that the award be made to a bidder other than the commission's recommended bidder. The leasing state agency's recommendation must contain the agency's justification for its recommendation and a complete explanation of all factors it considered.

SECTION 10.07. Sections 2167.054(a), (g), and (i), Government Code, are amended to read as follows:

(a) The commission may lease space using competitive sealed proposals ~~[if the commission first determines that competitive bidding is not practical or is disadvantageous to the state].~~

(g) The commission shall make a written award of a lease to the offeror whose proposal provides the best value for [is the most advantageous to] the state, considering price and the evaluation factors in the request for proposals. ~~[The commission may not use other factors or criteria in its evaluation.]~~ The commission shall state in writing in the contract file the reasons for which an award is made.

(i) If the competitive sealed proposal procedure for leasing space is used by a state agency [an institution of higher education] that has been delegated leasing authority under Section 2167.005, the agency [institution]:

~~[(1) must first determine that competitive bidding is not practical or is disadvantageous to the state; and~~

~~[(2)] shall follow the procedures outlined by this section and any rules adopted by the commission.~~

SECTION 10.08. Subchapter B, Chapter 2167, Government Code, is amended by adding Section 2167.0541 to read as follows:

Sec. 2167.0541. USE OF PRIVATE FIRMS TO OBTAIN SPACE. (a) The commission may contract with one or more private brokerage or real estate firms to assist the commission in obtaining lease space for state agencies on behalf of the commission under this chapter.

(b) A private brokerage or real estate firm with which the commission contracts under Subsection (a) may assist the commission in leasing facilities under this chapter.

SECTION 10.09. Section 2167.055(b), Government Code, is amended to read as follows:

(b) A [The] lease contract entered into under Section 2167.053 or 2167.054 must reflect the provisions contained in the invitation for bids or request for proposals, the successful bid or proposal, and the award of the contract.

SECTION 10.10. Subchapter C, Chapter 2167, Government Code, is amended by adding Sections 2167.105, 2167.106, and 2167.107 to read as follows:

Sec. 2167.105. REPORT ON NONCOMPLIANCE. If the commission determines that a state agency has not complied with the commission's rules or with other state law related to leasing requirements, the commission shall report the noncompliance to the members of the state agency's governing body and to the governor, lieutenant governor, and speaker of the house of representatives. The commission shall include in its report an estimate of the fiscal impact resulting from the noncompliance.

Sec. 2167.106. ANNUAL REPORT. The staff of the commission shall annually submit a report to the commission regarding opportunities for delegating leasing authority to state agencies with statewide operations. The report must include comments from state agencies with statewide operations.

Sec. 2167.107. WAREHOUSE SPACE USE STUDY. (a) The commission shall evaluate the operation of the first four state-leased warehouses in Austin for which the leases expire after October 1, 2001. The commission shall work with the state agency that operates the warehouse to reduce inefficient warehouse space use and adopt practices that can reduce the agency's need for warehouse space and eliminate warehouse leases.

(b) The commission and the state agency shall:

(1) identify excess inventory;

(2) determine the most appropriate ways to eliminate excess inventory; and

(3) determine the extent to which the state agency uses the following

management principles in operating the warehouse:

(A) automated order processing;

(B) training customers how to use the supply system;

(C) changing relationships with suppliers to reduce inventory maintained by the state agency;

(D) establishing supplier support agreements to reduce the time for delivery from a supplier;

(E) training supply staff to use information to manage supplies; and

(F) reducing administrative cycle times through automation.

(c) The commission shall assist the state agency operating the warehouse in developing a plan to reduce the need for warehouse space by reducing inventory, selling surplus property, and efficiently managing warehouse operations. Each agency shall include the plan as part of its strategic plan submitted under Chapter 2056 during calendar year 2002.

(d) This section expires September 1, 2003.

SECTION 10.11. A lease contract entered into by the General Services Commission before September 1, 2001, under Chapter 2167, Government Code, is governed during the remaining term of the lease by Chapter 2167, Government Code, as it existed immediately before September 1, 2001, and the prior law is continued in effect for this purpose. Chapter 2167, Government Code, as amended by this Act, applies to the renewal of a lease described by this section.

ARTICLE 11. SURPLUS PROPERTY

SECTION 11.01. Section 2175.065, Government Code, is amended to read as follows:

Sec. 2175.065. DELEGATION OF AUTHORITY TO STATE AGENCY. (a) The commission may authorize a state agency to dispose of surplus or salvage property if the agency demonstrates to the commission its ability to dispose of the property under Subchapters C and E in a manner that results in cost savings to the state, under commission rules adopted under this chapter.

(b) The commission shall establish by rule the criteria for determining that a delegation of authority to a state agency results in cost savings to the state.

SECTION 11.02. Subchapters C and D, Chapter 2175, Government Code, are amended to read as follows:

SUBCHAPTER C. DIRECT TRANSFER OR OTHER DISPOSITION OF SURPLUS OR SALVAGE PROPERTY BY STATE AGENCY

Sec. 2175.121. APPLICABILITY. This subchapter applies only to surplus or salvage property to which Subchapter D does not apply.

Sec. 2175.122. STATE AGENCY NOTICE TO COMMISSION. A state agency that determines it has surplus or salvage property shall inform the commission of the property's kind, number, location, condition, original cost or value, and date of acquisition.

Sec. 2175.123. DETERMINING METHOD OF DISPOSAL. (a) Based on the condition of the property, a state agency shall determine whether the property is:

(1) surplus property that should be offered for transfer under Section 2175.125 or sold to the public; or

(2) salvage property.

(b) The state agency shall inform the commission and the comptroller of its determination.

Sec. ~~2175.124~~ [2175.122]. COMMISSION NOTICE TO OTHER ENTITIES. After a determination that [On receiving notice from] a state agency [that the agency] has surplus [or salvage] property, the commission shall inform other state agencies, political subdivisions, and assistance organizations of the comptroller's website that lists surplus property that is available for sale [the property's kind, number, location, and condition].

Sec. 2175.1245. ADVERTISING ON COMPTROLLER WEBSITE. Not later than the second day after the date the comptroller receives notice from a state agency that the agency has surplus property, the comptroller shall advertise the property's kind, number, location, and condition on the comptroller's website.

Sec. ~~2175.125~~ [2175.123]. DIRECT TRANSFER. During the 10 business [30] days after the date the property is posted on the comptroller's website [following dissemination of information under Section 2175.122], a state agency, political subdivision, or assistance organization may coordinate directly with the reporting state agency for a transfer of the property at a price established by the reporting agency.

Sec. ~~2175.126~~ [~~2175.124~~]. NOTICE OF TRANSFER TO COMPTROLLER; ADJUSTMENT OF APPROPRIATIONS AND PROPERTY ACCOUNTING RECORDS; REMOVAL FROM WEBSITE. (a) If property is transferred to a state agency, the participating agencies shall report the transaction to the comptroller.

(b) On receiving notice under this section, the comptroller shall, if necessary:

- (1) debit and credit the proper appropriations; and
- (2) adjust state property accounting records.

(c) Not later than the second day after the date the comptroller receives notice under Subsection (a), the comptroller shall remove the property from the list of surplus property for sale on the comptroller's website.

Sec. ~~2175.127~~ [~~2175.125~~]. PRIORITY FOR TRANSFER TO STATE AGENCY. During the 10 business [~~30~~] days after the date the property is posted on the comptroller's website [~~of notice under Section 2175.122~~], a transfer to a state agency has priority over any other transfer under rules adopted by the commission.

Sec. ~~2175.128~~ [~~2175.126~~]. DISPOSITION OF DATA PROCESSING EQUIPMENT. (a) If a disposition of a state agency's surplus or salvage data processing equipment is not made under Section 2175.125 or 2175.184 [~~this subchapter~~], the state agency shall transfer the equipment to the Texas Department of Criminal Justice. The state agency may not collect a fee or other reimbursement from the Texas Department of Criminal Justice for the surplus or salvage data processing equipment.

(b) If a disposition of the surplus or salvage data processing equipment of a state eleemosynary institution or an institution or agency of higher education is not made under other law, the institution or agency shall transfer the equipment to the Texas Department of Criminal Justice. The institution or agency may not collect a fee or other reimbursement from the Texas Department of Criminal Justice for the surplus or salvage data processing equipment.

~~[SUBCHAPTER D. DISPOSITION OF SURPLUS OR SALVAGE
PROPERTY BY COMPETITIVE BIDDING]~~

Sec. ~~2175.129~~ [~~2175.181~~]. DISPOSITION BY COMPETITIVE BIDDING, [~~OR~~] AUCTION, OR DIRECT SALE. (a) If a disposition of a state agency's surplus [~~or salvage~~] property is not made under Section 2175.125 [~~Subchapter C~~], the commission shall:

(1) sell the property by competitive bid, [or] auction, or direct sale to the public, including a sale using an Internet auction site; or

(2) delegate to the state agency authority to sell the property by competitive bid, auction, or direct sale to the public, including a sale using an Internet auction site [bidding].

(b) The commission or a state agency to which authority is delegated under Subsection (a)(2) or under Section 2175.065 shall determine which method of sale shall be used based on the method that is most advantageous to the state under the circumstances. The commission shall adopt rules establishing guidelines for making that determination.

(c) In using an Internet auction site to sell surplus property under this section, the commission or state agency shall post the property on the site for at least 10 days.

Sec. ~~2175.130~~. DISPOSITION BY DIRECT SALE TO PUBLIC. (a) If the commission or a state agency to which authority is delegated under Section 2175.129(a)(2) or 2175.065 determines that selling the property by

competitive bid or auction, including a sale using an Internet auction site, would not maximize the resale value of the property to the state, the commission or agency may sell surplus or salvage property directly to the public.

(b) The commission, in cooperation with the state agency that declared the property as surplus, or a state agency to which authority is delegated under Section 2175.129(a)(2) or 2175.065 shall set a fixed price for the property.

Sec. 2175.131 [2175-182]. PURCHASER'S FEE. (a) The commission or a state agency disposing of property by a method other than direct transfer under this subchapter shall collect a fee from the purchaser.

(b) The commission or state agency shall set the fee at an amount that is:

- (1) sufficient to recover costs associated with the sale; and
- (2) at least two percent but not more than 12 percent of sale proceeds.

Sec. 2175.132 [2175-183]. ADVERTISEMENT OF SALE. If the value of an item or a lot of property to be sold is estimated to be more than \$5,000, the commission or the state agency authorized to sell the property shall advertise the sale at least once in at least one newspaper of general circulation in the vicinity in which the property is located.

Sec. 2175.133 [2175-184]. REPORTING SALE; PROPERTY ACCOUNTING ADJUSTMENT. (a) On the sale by the commission of surplus or salvage property, the commission shall report the property sold and the sale price to the state agency that declared the property as surplus or salvage.

(b) A state agency for which surplus or salvage property is sold or that sells surplus or salvage property under authority of the commission shall report the sale and amount of sale proceeds to the comptroller.

(c) If property reported under this section is on the state property accounting system, the comptroller shall remove the property from the property accounting records.

Sec. 2175.134 [2175-185]. PROCEEDS OF SALE. (a) Proceeds from the sale of surplus or salvage property, less the cost of advertising the sale, the cost of selling the surplus or salvage property, including the cost of auctioneer services, and the amount of the fee collected under Section 2175.131 [2175-182], shall be deposited to the credit of the appropriate appropriation item of the state agency for which the sale was made.

(b) The portion of sale proceeds equal to the cost of advertising the sale and the cost of selling the surplus or salvage property, including the cost of auctioneer services, shall be deposited in the state treasury to the credit of the appropriation item of the commission or other state agency from which the costs were paid.

Sec. 2175.135 [2175-186]. PURCHASER'S TITLE. A purchaser of surplus [or salvage] property at a sale conducted under Section 2175.129 or 2175.130 [this subchapter] obtains good title to the property if the purchaser has in good faith complied with:

- (1) the conditions of the sale; and
- (2) applicable commission rules.

SUBCHAPTER D. DISPOSITION OF SURPLUS OR SALVAGE PROPERTY BY COMMISSION

Sec. 2175.181. APPLICABILITY. (a) This subchapter applies only to surplus and salvage property located in:

- (1) Travis County;
- (2) a county in which federal surplus property is warehoused by the commission under Subchapter G; or

(3) a county for which the commission determines that it is cost-effective to follow the procedures created under this subchapter and informs affected state agencies of that determination.

(b) This subchapter does not apply to a state agency delegated the authority to dispose of surplus or salvage property under Section 2175.065.

Sec. 2175.1815. ALTERNATIVE APPLICABILITY. (a) Notwithstanding Section 2175.181, until January 1, 2003, this subchapter applies only to a state agency selected by the commission to participate in the disposal process created under this subchapter.

(b) Subchapter C applies to a state agency that is not selected by the commission to participate under this subchapter.

(c) This section expires January 1, 2003.

Sec. 2175.182. STATE AGENCY TRANSFER OF PROPERTY TO COMMISSION. (a) The commission is responsible for the disposal of surplus or salvage property under this subchapter. The commission may take physical possession of the property. A state agency maintains ownership of property throughout the disposal process.

(b) Based on the condition of the property, the commission shall determine whether the property is:

(1) surplus property that should be offered for transfer under Section 2175.184 or sold to the public; or

(2) salvage property.

(c) The commission shall inform the comptroller's office of the property's kind, number, location, condition, original cost or value, and date of acquisition.

Sec. 2175.1825. ADVERTISING ON COMPTROLLER WEBSITE. Not later than the second day after the date the comptroller receives notice from the commission under Section 2175.182(c), the comptroller shall advertise the property's kind, number, location, and condition on the comptroller's website.

Sec. 2175.183. COMMISSION NOTICE TO OTHER ENTITIES. On taking responsibility for surplus property under this subchapter, the commission shall inform other state agencies, political subdivisions, and assistance organizations of the comptroller's website that lists surplus property that is available for sale.

Sec. 2175.184. DIRECT TRANSFER. During the 10 business days after the date the property is posted on the comptroller's website, a state agency, political subdivision, or assistance organization may coordinate with the commission for a transfer of the property at a price established by the commission in cooperation with the transferring agency. A transfer to a state agency has priority over any other transfer during this period.

Sec. 2175.185. NOTICE OF TRANSFER TO COMPTROLLER; ADJUSTMENT OF APPROPRIATIONS AND PROPERTY ACCOUNTING RECORDS; REMOVAL FROM WEBSITE. (a) If property is transferred to a state agency under Section 2175.184, the participating agencies shall report the transaction to the comptroller.

(b) On receiving notice under this section, the comptroller shall, if necessary:

(1) debit and credit the proper appropriations; and

(2) adjust state property accounting records.

(c) Not later than the second day after the date the comptroller receives notice under Subsection (a), the comptroller shall remove the property from the list of surplus property for sale on the comptroller's website.

Sec. 2175.186. DISPOSITION BY COMPETITIVE BIDDING, AUCTION, OR DIRECT SALE. (a) If a disposition of a state agency's surplus property is not made under Section 2175.184, the commission shall sell the property by competitive bid, auction, or direct sale to the public, including a sale using an Internet auction site.

(b) The commission shall determine which method of sale shall be used based on the method that is most advantageous to the state under the circumstances. The commission shall adopt rules establishing guidelines for making that determination.

(c) In using an Internet auction site to sell surplus property under this section, the commission shall post the property on the site for at least 10 days.

Sec. 2175.187. DISPOSITION BY DIRECT SALE TO PUBLIC. (a) If the commission determines that selling the property by competitive bid or auction, including a sale using an Internet auction site, would not maximize the resale value of the property to the state, the commission may sell surplus property directly to the public.

(b) The commission shall set a fixed price for the property in cooperation with the state agency that owns the property.

Sec. 2175.188. PURCHASER'S FEE. (a) For property that is sold under Section 2175.186 or 2175.187, the commission shall collect a fee from the purchaser.

(b) The commission shall set the fee at an amount that is:

(1) sufficient to recover costs associated with the sale; and

(2) at least two percent but not more than 12 percent of sale proceeds.

Sec. 2175.189. ADVERTISEMENT OF SALE. If the value of an item or a lot of property to be sold is estimated to be more than \$5,000, the commission shall advertise the sale at least once in at least one newspaper of general circulation in the vicinity in which the property is located.

Sec. 2175.190. REPORTING SALE; PROPERTY ACCOUNTING ADJUSTMENT. (a) On the sale by the commission of surplus or salvage property, the commission shall report the property sold and the sale price to the state agency that owned the property and to the comptroller.

(b) If property reported under this section is on the state property accounting system, the comptroller shall remove the property from the property accounting records.

Sec. 2175.191. PROCEEDS OF SALE. (a) Proceeds from the sale of surplus or salvage property, less the cost of advertising the sale, the cost of selling the surplus or salvage property, including the cost of auctioneer services, and the amount of the fee collected under Section 2175.188, shall be deposited to the credit of the appropriate appropriation item of the state agency for which the sale was made.

(b) The portion of sale proceeds equal to the cost of advertising the sale and the cost of selling the surplus or salvage property, including the cost of auctioneer services, if any, shall be deposited in the state treasury to the credit of the appropriation item of the commission.

Sec. 2175.192. PURCHASER'S TITLE. A purchaser of surplus property at a sale conducted under Section 2175.186 or 2175.187 obtains good title to the property if the purchaser has in good faith complied with:

(1) the conditions of the sale; and

(2) applicable commission rules.

Sec. 2175.193. CONTRACTS FOR DESTRUCTION OF PROPERTY. The commission shall contract for the disposal of property under Subchapter E in a manner that maximizes value to the state.

SECTION 11.03. This article takes effect January 1, 2002.

ARTICLE 12. PAPER RECYCLING PROGRAM

SECTION 12.01. Section 2175.902, Government Code, is amended to read as follows:

Sec. 2175.902. MANDATORY PAPER RECYCLING PROGRAM. (a) The Texas Building Commission [commission] shall establish a mandatory recycling program for a state agency that occupies a building [and maintain in each building] under its control [procedures for collecting separately from other wastes all paper for recycling disposed of in that building]. By rule, the Texas Building Commission shall:

- (1) establish guidelines and procedures for collecting and recycling of paper;
- (2) set recycling goals and performance measures;
- (3) require state agencies to designate a recycling coordinator;
- (4) provide employee and custodial education and training;
- (5) provide feedback and recognition to state agencies when appropriate; and
- (6) inform state agencies when proper recycling methods are not used.

(b) If the Texas Building Commission finds that a state agency's recycling program meets or exceeds the standards created under Subsection (a), the Texas Building Commission [The commission] may delegate its responsibility under this section [subsection] to a state agency located in a [each] building under its control.

(c) [(b)] The Texas Building Commission [commission] or a state agency with delegated responsibility under Subsection (b) [(a)] shall sell the paper for recycling to the highest bidder.

(d) The Texas Building Commission may enter into an interagency agreement to provide recycling services to a state agency otherwise excluded from the program.

ARTICLE 13. HISTORICALLY UNDERUTILIZED BUSINESSES

SECTION 13.01. Section 2161.061, Government Code, is amended to read as follows:

Sec. 2161.061. COMMISSION CERTIFICATION OF HISTORICALLY UNDERUTILIZED BUSINESSES[; - MUNICIPAL CERTIFICATION]. (a) The commission shall certify historically underutilized businesses.

(b) As one of its certification procedures, the commission may:

- (1) approve the certification program of:
 - (A) one or more local governments in this state that certify historically underutilized businesses, minority business enterprises, women's business enterprises, or disadvantaged business enterprises under substantially the same definition, to the extent applicable, used by Section 2161.001; and
 - (B) nonprofit organizations that certify on behalf of local governments; and

(2) certify a business that is certified by a [under the] local government or by a nonprofit organization certifying on behalf of a local government [program] as a historically underutilized business under this chapter.

(c) To maximize the number of certified historically underutilized businesses, the commission shall enter into agreements with local governments in this state that conduct certification programs described by Subsection (b) and with nonprofit organizations that certify on behalf of local governments. The agreements must take effect immediately and:

- (1) allow for automatic certification of businesses certified by [under] the local government or nonprofit organization certifying on behalf of the local government [program];

(2) provide for the efficient updating of the commission database containing information about historically underutilized businesses and potential historically underutilized businesses; and

(3) provide for a method by which the commission may efficiently communicate with businesses certified by ~~[under]~~ the local government or nonprofit organization certifying on behalf of the local government ~~[program]~~ and provide those businesses with information about the state historically underutilized business program.

(d) A local government or a nonprofit organization that certifies historically underutilized businesses, minority business enterprises, women's business enterprises, or disadvantaged business enterprises as described in Subsections (b) and (c) shall complete the certification of an applicant or provide an applicant with written justification of its certification denial within the period established by the commission in its rules for certification activities.

SECTION 13.02. Section 2161.065, Government Code, is amended by adding Subsection (c) to read as follows:

(c) In selecting historically underutilized business subcontractors under this section, an agency shall give preference to subcontractors that demonstrate the greatest need for a mentor, as determined by the agency on consideration of:

- (1) the agency's goals, procurement history, and procurement needs; and
- (2) the subcontractor's goals.

SECTION 13.03. Section 2161.253(a), Government Code, is amended to read as follows:

(a) When a state agency requires a historically underutilized business subcontracting plan under Section 2161.252, the awarded contract shall contain, as a provision of the contract that must be fulfilled, the plan that the contractor submitted in its bid, proposal, offer, or other applicable expression of interest for the contract. The contractor shall make good faith efforts to implement the plan. A contractor's participation in a mentor-protége program under Section 2161.065 and submission of a protege as a subcontractor in the contractor's historically underutilized business subcontracting plan constitutes a good faith effort under this section for the particular area of the subcontracting plan involving the protege.

ARTICLE 14. MISCELLANEOUS PROVISIONS

SECTION 14.01. Section 2054.022, Government Code, is amended to read as follows:

Sec. 2054.022. CONFLICT OF INTEREST. (a) A member of the board or the executive director ~~[an employee of the department]~~ may not:

(1) be a person required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have, a substantial interest in the information resources technologies industry;

(2) be an officer, employee, or paid consultant of a business entity that has, or of a trade association of business entities that have, a substantial interest in the information resources technologies industry and that may contract with state government;

(3) own, control, or have, directly or indirectly, more than a 10 percent interest in a business entity that has a substantial interest in the information resources technologies industry and that may contract with state government;

(4) receive more than 25 percent of the individual's income from a business entity that has a substantial interest in the information resources technologies industry and that may contract with state government;

(5) be interested in or connected with a contract or bid for furnishing a state agency with information resources technologies;

(6) be employed by a state agency as a consultant on information resources technologies; or

(7) accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise.

(b) A person who is the spouse of an officer, employee, or paid consultant of a business entity that has, or of a trade association of business entities that have, a substantial interest in the information resources technologies industry and that may contract with state government may not be[:

~~(1)~~ a member of the board or the executive director~~;~~ or

~~(2) an employee of the department who:~~

~~(A) is exempt from the state's position classification plan; or~~

~~(B) is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule].~~

(c) An employee of the department, other than the executive director:

(1) may not participate in the department's bidding process, including the proposal development related to a contract and the negotiation of a contract, if:

(A) the employee receives more than five percent of the employee's income from any likely bidder on the contract; or

(B) the employee's spouse is employed by any likely bidder on the contract; and

(2) may not:

(A) be a person required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have, a substantial interest in the information resources technologies industry; or

(B) be employed by a state agency as a consultant on information resources technologies.

(d) For the purposes of this section, a trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(e) ~~(1)~~ The executive director shall dismiss an employee of the department who violates a prohibition under Subsection (c) ~~(1)~~, and the board shall remove the executive director if the executive director violates a prohibition under Subsection (a).

SECTION 14.02. Section 552.010, Government Code, is amended to read as follows:

Sec. 552.010. STATE GOVERNMENTAL BODIES: FISCAL AND OTHER INFORMATION RELATING TO MAKING INFORMATION ACCESSIBLE.

(a) Each state governmental body shall report to the Texas Procurement Commission [~~Legislative Budget Board~~] the information the commission [~~board~~] requires regarding:

(1) the number and nature of requests for information the state governmental body processes under this chapter in the period covered by the report; and

(2) the cost to the state governmental body in that period in terms of capital expenditures and personnel time of:

(A) responding to requests for information under this chapter; and

(B) making information available to the public by means of the Internet or another electronic format.

(b) The Texas Procurement Commission [~~Legislative Budget Board~~] shall design and phase in the reporting requirements in a way that:

(1) minimizes the reporting burden on state governmental bodies; and

(2) allows the legislature and state governmental bodies to estimate the extent to which it is cost-effective for state government, and if possible the extent to which it is cost-effective or useful for members of the public, to make information available to the public by means of the Internet or another electronic format as a supplement or alternative to publicizing the information only in other ways or making the information available only in response to requests made under this chapter.

(c) The open records steering committee and the state auditor, at the request of the Texas Procurement Commission [~~Legislative Budget Board~~], shall assist the commission [~~board~~] in designing its reporting requirements under this section. The commission [~~board~~] shall share the information reported under this section with the open records steering committee.

ARTICLE 15. EFFECTIVE DATE

SECTION 15.01. Except as otherwise provided by this Act, this Act takes effect September 1, 2001.

Floor Amendment No. 1

Amend **CSSB 311** as follows:

(1) In SECTION 1.01 of the bill, in proposed Section 552.0095, Government Code (House Committee Printing, page 1, lines 15 and 16), strike "ATTORNEY GENERAL" and substitute "TEXAS PROCUREMENT COMMISSION".

(2) Strike SECTION 13.02 of the bill (House Committee Printing, page 122, lines 2-10), and renumber subsequent SECTIONS of the bill accordingly.

Floor Amendment No. 2

Amend **CSSB 311** in SECTION 1.16 of the bill, immediately following proposed Section 2153.013, Government Code (House Committee Printing, page 13, between lines 7 and 8), by inserting the following:

Sec. 2153.014. APPLICABILITY OF SUBTITLE; HISTORICALLY UNDERUTILIZED BUSINESSES. Notwithstanding Section 443.023, the commission and the division are subject to this subtitle, including provisions that relate to small contractor participation assistance programs and to historically underutilized businesses.

Floor Amendment No. 3

Amend **CSSB 311** in SECTION 2.01 of the bill, in proposed Section 2155.502, Government Code (House Committee Printing, page 33, lines 20-22), by striking proposed Subsection (c) and substituting the following:

(c) The commission may not list a multiple award contract on a schedule developed under this section if the goods or services provided by that contract:

- (1) are available from only one vendor; or
- (2) are telecommunications services, facilities, or equipment.

(d) In this section, "telecommunications" has the meaning assigned by Section 2054.003.

Floor Amendment No. 4

Amend **CSSB 311** by striking SECTION 4.18 of the bill (House Committee Printing, page 49, lines 10-20) and substituting the following:

SECTION 4.18. Section 2170.004, Government Code, is amended to read as follows:

Sec. 2170.004. **CONTRACTS WITH ENTITIES OTHER THAN STATE AGENCIES.** The department [~~commission~~] may contract for use of the consolidated telecommunications system with:

- (1) each house of the legislature;
- (2) a legislative agency;
- (3) an agency that is not a state agency as defined by Section 2151.002; [~~and~~]
- (4) a political subdivision, including a county, municipality, or district; and
- (5) a private institution of higher education accredited by a recognized accrediting agency, as defined by Section 61.003, Education Code, that:

(A) engages in distance learning, as defined by Section 57.021, Utilities Code; and

(B) receives federal funds for distance learning initiatives.

Floor Amendment No. 5

Amend **CSSB 311** between Sections 9.08 and 9.09 (House committee report, page 100, following line 27), by inserting the following appropriately numbered SECTIONS and renumbering the subsequent SECTIONS of the article accordingly:

SECTION _____. Section 2166.258, Government Code, is amended to read as follows:

Sec. 2166.258. **COMMON SURETY OR INSURER.** (a) The commission and each [~~or an~~] agency whose project is exempted from all or part of this chapter under Section 2166.003 shall jointly or separately enter into a competitively bid contract [~~may negotiate an arrangement advantageous to the state~~] with a surety or an insurer, as appropriate, authorized to do business in this state and with experience in surety bond support services, under which the surety or insurer shall aggressively assist historically underutilized businesses and small businesses to obtain the bonds or insurance required to qualify for a contract or subcontract on a project administered by the commission or other agency [~~to furnish bonds, insurance, or both that a contractor or subcontractor is required to execute or carry to receive a contract or subcontract on a project administered by the commission or other agency~~].

(b) Notwithstanding Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code), the commission and an [~~or other~~] agency whose project is exempted from all or part of this chapter under Section 2166.003 shall [~~may~~] require a contractor or subcontractor to meet part or all of the bonding or insurance requirements for the project under the contract entered into under Subsection (a) [~~arrangement negotiated~~] by the commission or other agency.

(c) A contract under Subsection (a) must:

- (1) be renewed at least once each state fiscal biennium;
- (2) require the surety or insurer to aggressively take steps to furnish assistance for obtaining bonds, insurance, or both to historically underutilized businesses and small businesses; and

(3) provide that the surety's or insurer's performance under the contract will be evaluated at least in part on the basis of the number of historically underutilized businesses, small businesses, and other businesses that obtain the required bonds, insurance, or both from the contractor.

(d) The commission or other state agency entering into a contract with a surety or insurer under Subsection (a) shall conduct annual program audits and performance reviews under the contract.

SECTION _____. The change in law made by this Act does not affect a contract entered into between a state agency and a surety or an insurer under Section 2166.258, Government Code, that is in force on that date during the term of the contract, but the renewal of the contract must comply with Section 2166.258, Government Code, as amended by this Act.

Floor Amendment No. 6

Amend **CSSB 311** in SECTION 1.29 of the bill after Subsection (b) (House Committee Printing, page 30, between lines 17 and 18), by inserting the following:

(c) The executive director of the General Services Commission serving on the effective date of this Act becomes an employee of the Texas Procurement Commission as provided by Subsection (a)(3) of this section, but that person does not automatically become the executive director of the Texas Procurement Commission. To become the executive director of the Texas Procurement Commission, that person must apply for the position and the employment in that capacity must be approved by the Texas Procurement Commission.

Floor Amendment No. 7

Amend **CSSB 311** in SECTION 13.01 as follows:

(1) Strike Subsection (b), Section 2161.061, Government Code (Committee Printing, page 120, line 15 to page 121, line 1), and substitute the following:

(b) As one of its certification procedures, the commission may:

(1) approve the certification program of one or more local governments or nonprofit organizations in this state that certify historically underutilized businesses, minority business enterprises, women's business enterprises, or disadvantaged business enterprises under substantially the same definition, to the extent applicable, used by Section 2161.001, if the local government or nonprofit organization meets or exceeds the standards established by the commission; and

(2) certify a business that is certified by a [under the] local government or by a nonprofit organization [program] as a historically underutilized business under this chapter.

(2) In Subsection (c), Section 2161.061, Government Code (Committee Printing, page 121, lines 6-7), strike "that certify on behalf of local governments" and substitute ". The commission may terminate an agreement if a local government or nonprofit organization fails to meet the standards established by the commission for certifying historically underutilized businesses".

(3) In Subsection (c)(1), Section 2161.061, Government Code (Committee Printing, page 121, line 10), strike "certifying on behalf of the local government".

(4) In Subsection (c)(3), Section 2161.061, Government Code (Committee Printing, page 121, lines 17-18), strike "certifying on behalf of the local government".

Floor Amendment No. 8

Amend **CSSB 311** in ARTICLE 14 of the bill (House committee printing, page 122, line 25 through page 126, line 26), by adding the following appropriately numbered SECTIONS and renumbering the remaining SECTIONS of the ARTICLE as appropriate:

SECTION _____. Sections 2155.004(a), (d), and (h), Government Code, are amended to read as follows:

(a) A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who participated, to any extent, [received compensation from the agency to participate] in preparing the specifications or request for proposals on which the bid or contract is based.

(d) If a state agency determines that an individual or business entity holding a state contract was ineligible to have the contract accepted or awarded under Subsection (a), ~~[or] (b), or (h)~~, the state agency may immediately terminate the contract without further obligation to the vendor.

(h) A state agency may not accept a bid or award a contract to an individual or business entity that is barred from participating in state contracts under Section 2155.077 [This section does not prohibit a bidder or contract participant from providing free technical assistance to a state agency].

SECTION _____. Sections 2155.077(a) and (c), Government Code, are amended to read as follows:

(a) The commission ~~shall~~ [may] bar a vendor from participating in state contracts that are subject to this subtitle, including contracts for which purchasing authority is delegated to a state agency, for:

(1) substandard performance under a contract with the state or a state agency;

(2) material misrepresentations in a bid or proposal to the state or a state agency or during the course of performing a contract with the state or a state agency;

(3) fraud; ~~[or]~~

(4) breaching a contract with the state, ~~[or] a state agency, or a local government as defined by Section 271.081, Local Government Code; or~~

(5) misrepresentations to a subcontractor as to the amount and scope of the vendor's participation in previous awards made by the state, a state agency, or a local government as defined by Section 271.081, Local Government Code.

(c) The commission by rule shall:

(1) state generally the reasons for which a vendor will ~~[may]~~ be barred from participating in state contracts and the periods for which the vendor will ~~[may]~~ be barred; and

(2) prescribe the procedures under which the commission will determine whether and for how long a vendor will be barred.

SECTION _____. Section 2254.027, Government Code, is amended to read as follows:

Sec. 2254.027. SELECTION OF CONSULTANT. (a) In selecting a consultant, a state agency shall:

(1) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and

(2) if other considerations are equal, give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

- (b) A state agency may not select a consultant if the consultant:
- (1) breaches a consulting services contract with a political subdivision;
 - (2) misrepresents the scope of the consultant's participation in a consulting services contract with a state agency or political subdivision; or
 - (3) participates in a meeting related to an operation or project that results in the consultant being the only bidder, the only respondent, or the sole source provider for a consulting services contract related to that operation or project.

SECTION _____. The change in law made by this Act to Section 2155.004, Government Code, applies only to a contract awarded on or after the effective date of this Act.

Floor Amendment No. 9

Amend **CSSB 311** in SECTION 9.05 of the bill as follows:

(1) In proposed Section 2166.2531, Government Code (House Committee Printing, page 90, lines 4-8), strike proposed Subsection (b) and substitute the following:

(b) The commission may use the design-build method for a project. In using that method and in entering into a contract for the services of a design-build firm, the commission shall select a design-build firm on the basis of a competitive procurement process.

(2) On page 90, line 16, strike "qualifications" and substitute "bids or proposals".

(3) On page 90, line 19, insert "bids or" between "submitting" and "proposals".

(4) On page 91, line 3, strike "qualifications" and substitute "bids or proposals".

(5) In proposed Section 2166.2531, Government Code (House Committee Printing, page 91, line 5 through page 92, line 18), strike proposed Subsection (f) and reletter subsequent SECTIONS appropriately.

(6) In existing Subsection 2166.2531(g), Government Code, (House Committee Printing, page 92, lines 19 and 20), strike "under Subsection (f)".

(7) Strike existing Section 2166.2531(k) (House Committee Printing, page 93, line 15 through page 94, line 1).

Floor Amendment No. 10

Amend **CSSB 311** by adding the following appropriately numbered SECTIONS to ARTICLE 14 of the bill and renumbering subsequent SECTIONS in ARTICLE 14 appropriately:

SECTION _____. Subchapter L, Chapter 403, Government Code, is amended by adding Section 403.2731 to read as follows:

Sec. 403.2731. PROPERTY MANAGERS: QUALIFICATIONS AND COMPENSATION. (a) The classification officer shall create within the state's position classification plan under Chapter 654 a classification structure for property managers that effectively establishes a career ladder for state agency property managers. The classification structure for property managers must include at least three levels of classification and be based in part on the certification levels established by the National Property Management Association or by a similar organization that certifies personal property management professionals under comparable certification requirements.

(b) Each state agency that owns at least 50,000 items of personal property shall require at least one of its property managers to be certified by the National Property Management Association or by a similar organization that certifies personal property management professionals under comparable certification requirements.

SECTION _____. Each state agency subject to Section 403.2731(b), Government Code, as added by this Act, shall comply with the requirements of that law by not later than August 31, 2002.

Floor Amendment No. 11

Amend **CSSB 311** in SECTION 7.06 of the bill, in redesignated Section 2177.102(f), Government Code (House Committee Printing, page 77, line 11), by striking "commission" and substituting "department".

Floor Amendment No. 12

Amend **CSSB 311** (House Committee Printing) as follows:

(1) In Section 5.01 of the bill, in added Section 2262.002, Government Code, strike proposed Subsection (b) (page 58, lines 23-25) and substitute the following:

(b) This chapter does not apply to contracts of the Texas Department of Transportation that relate to highway construction or highway engineering.

(2) In Section 5.01 of the bill, in added Subsection (f), Section 2262.051, Government Code (page 60, line 6), strike "or execute the contract".

(3) In Section 5.05 of the bill, in Subsection (b)(1) (page 65, line 8), between "all" and "major", insert "unexpired".

(4) After Section 5.05 of the bill (page 65, between lines 14 and 15), insert:

(d) This section does not apply to contracts of the Texas Department of Transportation that relate to highway construction or highway engineering.

Floor Amendment No. 13

Amend **CSSB 311** (House Committee Printing) as follows:

(1) In Article 14 of the bill, insert appropriately numbered sections:

SECTION 14._____. Subchapter A, Chapter 2155, Government Code, is amended by adding Section 2155.0045 to read as follows:

Sec. 2155.0045. BIDS OR CONTRACTS FOR GOODS MADE BY CHILD OR FORCED LABOR PROHIBITED. (a) In this section:

(1) "Child" means an individual younger than 14 years of age.

(2) "Forced labor" means labor performed by an individual whose free will to perform the labor has been denied through violence or the threat of violence. The term does not include convict labor that occurs in any state in the United States.

(b) A vendor who contracts with the state may not make or enter into, and a state agency may not accept or enter into, a bid or contract for goods created in whole or in part by child or forced labor.

(c) A state agency may not accept a bid or award a contract for goods unless the bidder or contractor certifies in the bid or contract that the bidder or contractor, each person represented by the bidder or contractor, and each person acting for the represented person has not used, in the making of the goods, any child labor or forced labor.

(d) The bid or contract must include the following statement: "Under Section 2155.0045, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is eligible to receive the specified bid or contract and agrees that this contract may be terminated and payment withheld if this certification is inaccurate."

(e) A bid made, or a contract entered into, that violates this section is void as against public policy.

SECTION 14._____. Section 2155.0045, Government Code, as added by this article takes effect September 1, 2001, and applies only to a bid or contract that is made or entered into on or after that date. A bid or contract that is made or entered into before September 1, 2001, is governed by the law as it existed immediately before September 1, 2001, and that law is continued in effect for that purpose.

(2) Renumber the sections of the bill accordingly.

Floor Amendment No. 14

Amend **CSSB 311** between Articles 14 and 15 (House committee report, page 126, between lines 26 and 27), by adding the following appropriately numbered SECTIONS and renumbering the subsequent SECTIONS of the article accordingly:

SECTION _____. Section 2155.074(b), Government Code, is amended to read as follows:

(b) In determining the best value for the state, the purchase price, ~~and~~ whether the goods or services meet specifications, and the vendor's anticipated economic impact on the state, including sales, ad valorem tax revenue, franchise tax revenue, and any gain or loss of jobs, are the most important considerations. However, the commission or other state agency may, subject to Subsection (c) and Section 2155.075, consider other relevant factors, including:

- (1) installation costs;
- (2) life cycle costs;
- (3) the quality and reliability of the goods and services;
- (4) the delivery terms;
- (5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance agreements and support;
- (6) the cost of any employee training associated with a purchase;
- (7) the effect of a purchase on agency productivity; and
- (8) other factors relevant to determining the best value for the state in the context of a particular purchase.

SECTION _____. Subchapter H, Chapter 2155, Government Code, is amended by adding Section 2155.4439 to read as follows:

Sec. 2155.4439. PREFERENCE TO TEXAS BIDDERS. (a) The commission and all state agencies procuring goods or services may give preference to a Texas bidder.

(b) In the event of a conflict between this section and Section 2252.002, this section controls.

(c) In this section, "Texas bidder" means a bidder whose principal place of business is in this state, provided that a permanently staffed, full-time office is maintained at the place of business and provided that principal decision-makers of the bidder conduct the daily affairs of the bidder at the place of business. The mere presence of an employee or representative does not establish a location as the principal place of business.

SECTION _____. Section 466.105(a), Government Code, is amended to read as follows:

(a) A contract for the acquisition or provision of facilities, supplies, equipment, materials, or services related to the operation of the lottery is not subject to:

- (1) Chapter 2054 or 2254; or
- (2) Subtitle D, Title 10, except that Sections 2155.074 and 2155.4439 apply to the contract.

SECTION _____. Sections 2155.444(a) and (b), Government Code, are amended to read as follows:

(a) Except as provided under Section 2155.4439, the [The] commission and all state agencies making purchases of goods, including agricultural products, shall give preference to those produced or grown in this state or offered by Texas bidders as follows:

- (1) goods produced in this state or offered by Texas bidders shall equally be given preference if the cost to the state and quality are equal; and
- (2) agricultural products grown in this state shall be given first preference and agricultural products offered by Texas bidders shall be given second preference, if the cost to the state and quality are equal.

(b) Except as provided under Section 2155.4439, if [H] goods, including agricultural products, produced or grown in this state or offered by Texas bidders are not equal in cost and quality to other products, then goods, including agricultural products, produced or grown in other states of the United States shall be given preference over foreign products if the cost to the state and quality are equal.

Floor Amendment No. 15

Amend Floor Amendment No. 14 to **CSSB 311** as follows:

(1) In amended Section 2155.074(b), Government Code, between "(b)" and "In" (page 1, line 7, floor amendment), insert "This subsection does not apply to the Texas Department of Transportation.".

(2) In added Section 2155.4439(a), Government Code, between "agencies" and "procuring" (page 2, line 5, floor amendment), insert ", excluding the Texas Department of Transportation.".

(3) In amended Section 2155.444(a), Government Code, between "agencies" and "making" (page 2, line 27, floor amendment), insert ", excluding the Texas Department of Transportation.".

Floor Amendment No. 16

Amend **CSSB 311** by adding the following SECTION, appropriately numbered, to Article 14 of the bill and renumbering the subsequent SECTIONS of Article 14 of the bill appropriately:

SECTION _____. Subchapter H, Chapter 2155, Government Code, is amended by adding Section 2155.449 to read as follows:

Sec. 2155.449. PREFERENCE TO PRODUCTS AND SERVICES FROM ECONOMICALLY DEPRESSED OR BLIGHTED AREA. (a) In this section, "economically depressed or blighted area" means an area that:

(1) is an economically depressed or blighted area as defined by Section 2306.004; or

(2) meets the definition of a historically underutilized business zone as defined by 15 U.S.C. Section 632(p).

(b) The commission and all state agencies procuring goods or services shall give preference to goods or services produced in an economically depressed or blighted area if:

(1) the goods or services meet state specifications regarding quantity and quality; and

(2) the cost of the good or service does not exceed the cost of other similar products or services that are not produced in an economically depressed or blighted area.

Floor Amendment No. 17

Amend **CSSB 311** by adding the following SECTION, appropriately numbered, to Article 14 of the bill and renumbering the subsequent SECTIONS of Article 14 of the bill appropriately:

SECTION _____. Section 2157.0611, Government Code, is amended to read as follows:

Sec. 2157.0611. SOLICITATION OF [REQUIREMENT TO EVALUATE THREE] PROPOSALS [WHEN POSSIBLE]. (a) A catalogue purchase or lease that exceeds \$2,000 or a greater amount prescribed by commission rule shall, when possible, be based on an evaluation of at least three catalogue proposals made to the commission or other state agency by qualified information systems vendors. If at least three catalogue proposals are not evaluated by the commission or other state agency before a purchase or lease that exceeds the threshold amount is made, the commission or other agency shall document the reasons for that fact before making the purchase or lease under Section 2157.063.

(b) Before a state agency solicits proposals under Subsection (a), a state agency must determine in writing that:

(1) the commission or the Department of Information Resources does not have a current contract for the needed goods or services; or

(2) if the commission or the Department of Information Resources has a current contract for the needed goods or services, a proposal solicitation under Subsection (a) will result in a cost savings to the state of at least 10 percent more than use of the commission's or department's contract.

(c) If a state agency makes the finding in Subsection (b)(2) and a proposal solicitation under Subsection (a) does not result in a cost savings to the state of 10 percent, the state agency may not make a contract award based on the proposal solicitation.

Floor Amendment No. 19

Amend **CSSB 311** by adding the following SECTION, appropriately numbered, to Article 14 of the bill and renumbering the subsequent SECTIONS of Article 14 of the bill appropriately:

SECTION _____. Subchapter Z, Chapter 2252, Government Code, is amended by adding Section 2252.902 to read as follows:

Sec. 2252.902. INDEMNIFICATION. A contractor with the state may not require a subcontractor under the state contract to indemnify or hold harmless the contractor for claims or liabilities resulting from the negligent acts or omissions of the contractor or the contractor's employees.

Floor Amendment No. 20

Amend **CSSB 311** (House Committee Printing) as follows:

(1) In Article 14 of the bill, insert the following appropriately numbered sections:

SECTION 14. _____. Subdivision (1), Section 2258.001, Government Code, is amended to read as follows:

(1) "Locality in which the work is performed" means:

(A) for a contract for a public work awarded by the state, the political subdivision of the state in which the public work is located;

(i) [,] which may include a county, municipality, county and municipality, or district, except as provided by Subparagraph (ii); and

(ii) which, in a municipality with a population of 500,000 or more, may only include the geographic limits of the municipality; or

(B) for a contract for a public work awarded by a political subdivision of the state, the geographical limits of the political subdivision.

SECTION 14._____. Section 2258.022, Government Code, is amended to read as follows:

Sec. 2258.022. DETERMINATION OF PREVAILING WAGE RATES.

(a) For a contract for a public work awarded by a political subdivision of the state, the [A] public body shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work by:

(1) conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the political subdivision of the state in which the public work is to be performed; or

(2) using the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments, if the survey used to determine that rate was conducted within a three-year period preceding the date the public body calls for bids for the public work.

(b) For a contract for a public work awarded by the state, the public body shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work as follows. The public body shall conduct a survey of the wages received by classes of workers employed on projects of a character similar to the contract work both statewide and in the political subdivision of the state in which the public work is to be performed. The public body shall also consider the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments, but only if the survey used to determine that rate was conducted within a three-year period preceding the date the public body calls for bids for the public work. The public body shall determine the general prevailing rate of per diem wages in the locality based on the higher of:

(1) the rate determined from the survey conducted in the political subdivision;

(2) the arithmetic mean between the rate determined from the survey conducted in the political subdivision and the rate determined from the statewide survey; and

(3) if applicable, the arithmetic mean between the rate determined from the survey conducted in the political subdivision and the rate determined by the United States Department of Labor.

(c) The public body shall determine the general prevailing rate of per diem wages as a sum certain, expressed in dollars and cents.

(d) ~~(c)~~ A public body shall specify in the call for bids for the contract and in the contract itself the wage rates determined under this section.

(e) ~~(d)~~ The public body's determination of the general prevailing rate of per diem wages is final.

SECTION 14._____. The changes made to Sections 2258.001 and 2258.022, Government Code, by this article, take effect September 1, 2001. The changes made apply only to determining the general prevailing rate of per diem wages in connection with a contract for constructing a public work awarded by the state if the state first requests bids or proposals for its contract on or after that date.

(2) Renumber the sections of the bill accordingly.

Floor Amendment No. 21

Amend **CSSB 311** by adding the following SECTION, appropriately numbered, to Article 14 of the bill and renumbering the subsequent SECTIONS of Article 14 of the bill appropriately:

SECTION _____. None of the changes in law made by this Act are intended to weaken provisions of law favorable to small businesses or historically underutilized businesses. None of the changes in law made by this Act may be construed in such a way as to weaken provisions of law favorable to small businesses or historically underutilized businesses.

Floor Amendment No. 22

Amend **CSSB 311** by adding the following SECTIONS, appropriately numbered, at the end of Article 14 (House Committee Printing, page 126, between lines 26 and 27), and renumbering the subsequent SECTIONS of the bill appropriately:

SECTION _____. Section 2260.002, Government Code, is amended to read as follows:

Sec. 2260.002. **APPLICABILITY.** This chapter does not apply to:

(1) a claim for personal injury or wrongful death arising from the breach of a contract; or

(2) a contract executed or awarded on or before August 30, 1999.

SECTION _____. Section 2260.003(a), Government Code, is amended to read as follows:

(a) The total amount of money recoverable on a claim for breach of contract under this chapter may not, after deducting the amount specified in Subsection (b), exceed an amount equal to the sum of:

(1) the balance due and owing on the contract price; and

(2) the amount or fair market value of orders or requests ~~[-including orders]~~ for additional work made by a unit of state government to the extent that the orders or requests for additional work were actually performed.

SECTION _____. Section 2260.005, Government Code, is amended to read as follows:

Sec. 2260.005. **EXCLUSIVE PROCEDURE.** Subject to Section 2260.007, the ~~[The]~~ procedures contained in this chapter are exclusive and required prerequisites to suit in accordance with Chapter 107, Civil Practice and Remedies Code.

SECTION _____. Subchapter A, Chapter 2260, Government Code, is amended by adding Section 2260.007 to read as follows:

Sec. 2260.007. LEGISLATIVE PERMISSION TO SUE. (a) Notwithstanding Section 2260.005, the legislature retains the authority to deny or grant a waiver of

immunity to suit against a unit of state government by statute, resolution, or any other means the legislature may determine appropriate.

(b) This chapter does not and may not be interpreted to:

(1) divest the legislature of the authority to grant permission to sue a unit of state government on the terms, conditions, and procedures that the legislature may specify in the measure granting the permission;

(2) require that the legislature, in granting or denying permission to sue a unit of state government, comply with this chapter; or

(3) limit in any way the effect of a legislative grant of permission to sue a unit of state government unless the grant itself provides that this chapter may have that effect.

SECTION _____. Except for Section 2260.002(2), Government Code, as amended by this Act, which applies according to its own terms, the changes in law made by this article to Chapter 2260, Government Code, apply only to a contract executed on or after the effective date of this Act. A contract executed before the effective date of this Act is governed by the law applicable to the contract immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Floor Amendment No. 23

Amend **CSSB 311** in SECTION 5.01 of the bill by striking proposed Section 2262.002, Government Code (House Committee Printing, page 58, lines 20-25).

Floor Amendment No. 1 on Third Reading

Amend **CSSB 311** on third reading by adding the following SECTION at the end of Article 1, appropriately numbered, and renumbering the subsequent SECTIONS of the article appropriately:

SECTION _____. (a) The maximum annual salary of the executive director of the State Preservation Board during the state fiscal biennium beginning September 1, 2001, is equal to the maximum annual salary set for the executive director of the General Services Commission prescribed by the General Appropriations Act for the biennium.

(b) The maximum annual salary of the executive director of the Texas Procurement Commission during the state fiscal biennium beginning September 1, 2001, is \$90,000.

Floor Amendment No. 2 on Third Reading

Amend **CSSB 311** on third reading in amended Subsection (a), Section 2166.258, Government Code, as added by second reading Floor Amendment No. 5, between "or other agency" and the opening bracket, by inserting "The commission or other agency may not require a contractor or subcontractor to obtain a surety bond from a specific insurance company, surety company, agent, or broker".

Floor Amendment No. 3 on Third Reading

Amend **CSSB 311** on third reading by adding the following SECTIONS, appropriately numbered, to Article 14 of the bill and renumbering the subsequent SECTIONS of Article 14 of the bill appropriately:

SECTION _____. Section 2165.005(f), Government Code, is amended to read as follows:

(f) A building that ~~[which]~~ will be used as a state or regional headquarters for a state agency, other than a university building, a secure correctional facility operated by the Texas Youth Commission, or a prison, may bear the name of a person only if the person is deceased and was significant in the state's history.

SECTION _____. The Texas Building Commission shall rename the Jefferson County State School for the Honorable Al Price.

Floor Amendment No. 4 on Third Reading

Amend **CSSB 311** on third reading, in SECTION 5.01 of the bill, (as amended on 2nd reading by the Davis amendment No. 9) in Subchapter A, in Chapter 2262, Government Code, by adding Section 2262.002 to Chapter 2262 to read as follows:

Sec. 2262.002. EXEMPTIONS. Any provision of this chapter regarding the solicitation of contracts does not apply to the Texas Department of Transportation.

Floor Amendment No. 5 on Third Reading

Amend **CSSB 311** on third reading as follows:

In Article 9 of the bill (House Committee Report), add two new Sections, appropriately numbered, to read as follows:

SECTION _____. Section 2252.031, Government Code, is amended to read as follows:

Sec. 2252.031. DEFINITIONS. In this subchapter:

(6) "Subcontractor" means a person who provides public work, labor, or material to fulfill an obligation to a prime contractor or subcontractor for the performance or installation of any work required by a public works contract.

SECTION _____. Section 2252.032, Government Code, is amended to read as follows:

Sec. 2252.032. RETAINAGE. (a) A governmental entity shall:

(1) deposit in an interest-bearing account the retainage of a public works contract ~~[that provides for retainage of more than five percent of the periodic contract payment]~~; and

(2) pay the interest earned on the retainage to the prime contractor ~~[on completion of the contract]~~.

(b) A prime contractor shall pay to a subcontractor from whom retainage is withheld the percentage of the interest received from a governmental entity that is attributable to the subcontractor's work.

(c) A subcontractor shall pay to its subcontractor from whom retainage is withheld the percentage of the interest received from the prime contractor that is attributable to its subcontractor's work.

(d) A person obligated to pay interest under Subsection (a), (b), or (c) shall pay the interest within the period prescribed for payment by Chapter 2251.

(e) If a governmental entity is obligated to pay interest under this section and does not make the interest payments within the period prescribed by Subsection (d), interest accrues for the overdue payments in the manner and at the rate prescribed by Chapter 2251, less interest of the interest-bearing account.

(f) If a prime contractor or subcontractor is obligated to pay interest under this section and does not make the interest payments within the period prescribed by

Subsection (d), interest accrues for the overdue payments in the manner and at the rate prescribed by Chapter 2251.

The amendments were read.

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

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 311** 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; Shapleigh, Armbrister, Fraser, and Barrientos.

CONFERENCE COMMITTEE ON HOUSE BILL 1739

Senator Van de Putte 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 1739** 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 1739** 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 Van de Putte, Chair; Armbrister, Staples, Ogden, and Moncrief.

SENATE RESOLUTION 1192

Senator Madla offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That Senate Rule 12.03 is suspended, as provided by Senate Rule 12.08, to enable the conference committee appointed to resolve the differences between the house and senate versions of H.B. No. 328, relating to single-member trustee districts and trustees for certain school districts, 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 3. Section 11.352(a), Education Code, is amended to read as follows:

(a) The State Board of Education shall appoint for each district established under Section 11.351 a board of three, five, or seven trustees, as determined by the State Board of Education. A trustee is ~~[who are]~~ not required to be a resident ~~[residents]~~ of the district.

Explanation: This addition is necessary to address the governance of special-purpose school districts.

The resolution was read and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

SENATE RESOLUTION 1111

Senator Barrientos offered the following resolution:

WHEREAS, The Senate of the State of Texas takes pride in remembering World War II hero Doris "Dorie" Miller on the occasion of the Doris Miller Celebration being held on May 25, 2001, at the State Capitol; and

WHEREAS, Dorie Miller was born in Waco in 1919; after unsuccessfully trying to enlist in the Civilian Conservation Corps, he enlisted in the United States Navy in 1939; and

WHEREAS, In the early morning of December 7, 1941, Dorie's ship, the U.S.S. *West Virginia*, was among those attacked at Pearl Harbor; and

WHEREAS, During the attack, 22-year-old Dorie assisted the mortally wounded captain of the *West Virginia* out of the line of fire to a sheltered spot; Dorie accomplished this in the middle of heavy fire and the detonation of bombs all around him; and

WHEREAS, While struggling back to the bridge through the debris, Dorie came upon a machine gun whose gunner had been killed; although Dorie had never been trained to use the weapon, he began firing at the Japanese planes with telling effect and continued firing until the crew was ordered to abandon the ship; and

WHEREAS, For his heroism on board the *West Virginia*, Dorie Miller received the Navy Cross, the United States Navy's highest honor, from Admiral Chester Nimitz during a ceremony on the flight deck of the U.S.S. *Enterprise* at Pearl Harbor on May 27, 1942; Dorie was the first African American to receive this award; and

WHEREAS, Later assigned to the U.S.S. *Liscome Bay* in the Pacific, Dorie was on board on November 24, 1943, when the light aircraft carrier was sunk by a submarine; 272 sailors survived but 646 were lost, and Dorie was officially presumed dead a year and a day after the carrier went down; and

WHEREAS, A man of great honor and courage, Dorie Miller is a true Texas hero; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby honor the memory of Doris Miller, an outstanding man of valor and courage; and, be it further

RESOLVED, That a copy of this Resolution be prepared as an expression of the highest respect of the Texas Senate.

The resolution was again read.

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

The resolution was previously adopted on Monday, May 21, 2001.

GUEST PRESENTED

Senator Barrientos was recognized and introduced to the Senate Marcia Williams, coordinator of the event honoring Doris "Dorie" Miller.

The Senate welcomed Ms. Williams.

SENATE RESOLUTION 1206 ON SECOND READING

On motion of Senator Sibley and by unanimous consent, all necessary rules and the regular order of business were suspended to take up for consideration at this time on its second reading:

SR 1206, Memorializing the Congress of the United States to bestow the Congressional Medal of Honor on Doris "Dorie" Miller.

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

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 25, 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 232, Paying tribute to the late Thomas D. "Tom" Wells of Paris for his public service.

HCR 313, Honoring James Larry Tucker on his retirement as superintendent of the Leonard ISD.

SCR 59, Commending Betty Reese and congratulating her on her selection as Governor of the Texas District of Pilot International.

SCR 62, In memory of William "Bill" Kloster of Dublin.

SCR 66, Honoring the memory of fallen peace officers in Nacogdoches County.

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

RECESS

The President at 12:00 noon announced the Senate would stand recessed until 1:30 p.m. today.

AFTER RECESS

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

BILLS AND RESOLUTIONS SIGNED

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

HB 66, HB 71, HB 116, HB 131, HB 141, HB 171, HB 176, HB 196, HB 299, HB 398, HB 541, HB 557, HB 609, HB 726, HB 1075, HB 1107, HB 1117,

HB 1448, HB 1450, HB 1490, HB 1706, HB 1721, HB 2008, HB 2058, HB 2119, HB 2173, HB 2179, HB 2316, HB 2410, HB 2477, HB 2614, HB 2643, HB 2723, HB 2793, HB 2972, HB 3355, HB 3590, HB 3604, HCR 99, HCR 120, HCR 128, HCR 217, HCR 257, HCR 273, HCR 290, HCR 297, HCR 304.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 25, 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 704 (non-record vote)
HB 792 (non-record vote)
HB 920 (139 Ayes, 0 Nays, 2 Present Not Voting)
HB 1005 (non-record vote)
HB 1392 (143 Ayes, 0 Nays, 2 Present Not Voting)
HB 1449 (139 Ayes, 0 Nays, 2 Present Not Voting)
HB 1544 (non-record vote)
HB 1585 (non-record vote)
HB 1617 (135 Ayes, 0 Nays, 2 Present Not Voting)
HB 1776 (140 Ayes, 0 Nays, 2 Present Not Voting)
HB 1806 (non-record vote)
HB 1890 (non-record vote)
HB 1981 (non-record vote)
HB 2004 (141 Ayes, 1 Nays, 2 Present Not Voting)
HB 2102 (non-record vote)
HB 2109 (138 Ayes, 2 Nays, 2 Present Not Voting)
HB 2111 (non-record vote)
HB 2127 (non-record vote)
HB 2159 (non-record vote)
HB 2191 (non-record vote)
HB 2218 (136 Ayes, 1 Nays, 2 Present Not Voting)
HB 2243 (non-record vote)
HB 2250 (non-record vote)
HB 2262 (non-record vote)
HB 2277 (non-record vote)
HB 2295 (140 Ayes, 0 Nays, 2 Present Not Voting)
HB 2313 (non-record vote)
HB 2323 (non-record vote)
HB 2337 (non-record vote)

HB 2351 (non-record vote)
HB 2368 (non-record vote)
HB 2378 (non-record vote)
HB 2379 (140 Ayes, 0 Nays, 2 Present Not Voting)
HB 2383 (non-record vote)
HB 2397 (non-record vote)
HB 2403 (non-record vote)
HB 2421 (non-record vote)
HB 2436 (non-record vote)
HB 2439 (non-record vote)
HB 2453 (141 Ayes, 0 Nays, 2 Present Not Voting)
HB 2484 (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 981

House Conferees: King, Tracy - Chair/Crabb/Hawley/Kitchen/Lewis, Ron

HB 2204

House Conferees: Gutierrez - Chair/Alexander/Hardcastle/McReynolds/Walker

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

SB 45

House Conferees: Naishtat - Chair/Coleman/Gray/Keffer/Noriega

SB 273

House Conferees: Tillery - Chair/Goodman/Marchant/Rangel/Telford

SB 292

House Conferees: Telford - Chair/Kuempel/Marchant/Rangel/Tillery

SB 1573

House Conferees: Hawley - Chair/Capelo/Kuempel/Luna, Vilma/Seaman

SB 1839

House Conferees: Eiland - Chair/Naishtat/Smithee/Turner, Bob/Wohlgemuth

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 1641 (138 Ayes, 3 Nays, 2 Present Not Voting)

SB 113 (non-record vote)

THE HOUSE HAS RECOMMITTED THE FOLLOWING MEASURES TO CONFERENCE COMMITTEE:

HB 695 (non-record vote)

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

SENATE RULE 11.13 SUSPENDED
(Consideration of Bills in Committee)

On motion of Senator Brown and by unanimous consent, Senate Rule 11.13 was suspended to grant the conference committee on **SB 2** permission to meet while the Senate was meeting today.

SENATE BILL 317 WITH HOUSE AMENDMENTS

Senator Sibley called **SB 317** 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 317** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to continuation and functions of the Office of Consumer Credit Commissioner and the regulation of certain financial businesses.

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

SECTION 1. Section 14.056, Finance Code, is amended to read as follows:

Sec. 14.056. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

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

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

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

(c) A person may not act as the general counsel to the office 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 commissioner or an assistant commissioner, examiner, or other employee of the office may not be an officer, employee, or paid consultant of a trade association in an industry regulated by] the office.

SECTION 2. Section 14.058, Finance Code, is amended to read as follows:

Sec. 14.058. EQUAL EMPLOYMENT OPPORTUNITY. (a) The commissioner or the 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 office 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 office'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 [plan to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The plan must include:

[(1) a comprehensive analysis of the office's workforce by race, sex, ethnic origin, class of position, and salary or wage;

[(2) plans for recruitment, evaluation, selection, appointment, training, promotion, and other personnel policies;

[(3) steps reasonably designed to overcome any identified underutilization of minorities and women in the office's workforce; and

[(4) objectives and goals, timetables for achieving those objectives and goals, and assignment of responsibility for their achievement.

[(b) The plan must cover an annual period and the commissioner shall update it at least annually.

[(c) The office shall submit a plan progress report to the governor's office not later than the 30th day after November 1 and April 1 of each year and shall include in the report steps the office has taken during the reporting period to comply with requirements of this section].

SECTION 3. Section 14.062, Finance Code, is amended to read as follows:

Sec. 14.062. CONSUMER INFORMATION AND COMPLAINTS. (a) The office shall maintain a file on each written complaint filed with the office. The file must include:

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

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

(3) the subject matter of the complaint;

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

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

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

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

(c) The office, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation [commissioner shall keep an information file about each complaint filed with the office relating to a license holder or other lender regulated by the office under this chapter or Title 4 or 5.

[(b) At least quarterly until final disposition of any written complaint filed with the office relating to a license holder or other lender regulated by the office, the commissioner shall notify the parties to the complaint of the status of the complaint] unless the notice would jeopardize an undercover investigation.

SECTION 4. Section 14.066, Finance Code, is amended to read as follows:

Sec. 14.066. SUNSET PROVISION. The office 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 5. Subchapter B, Chapter 14, Finance Code, is amended by adding Section 14.067 to read as follows:

Sec. 14.067. EMPLOYEE INCENTIVE PROGRAM. The commissioner or the 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 6. Section 14.106, Finance Code, is amended to read as follows:

Sec. 14.106. INFORMATION [PROCEDURES] REGARDING EMPLOYMENT REQUIREMENTS [STANDARDS OF CONDUCT]. The commissioner or the commissioner's designee shall provide to agency employees, as often as necessary, information regarding the requirements for employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state employees [~~shall develop a procedure to ensure that a person holding the position of commissioner and each assistant commissioner, examiner, and other employee of the office is informed of the standards of conduct required by law for a state official or employee.~~].

SECTION 7. Section 14.107, Finance Code, is amended to read as follows:

Sec. 14.107. FEES. (a) The finance commission [~~commissioner~~] shall establish reasonable and necessary fees for carrying out the commissioner's powers and duties under this chapter, Title 4, and Chapters 371, 392, and 394 and under Chapters 38-41, Business & Commerce Code.

(b) The finance commission by rule shall set the fees for licensing and examination under Chapter 342, 348, or 371 at amounts or rates necessary to recover the costs of administering those chapters. The rules may provide that the amount of a fee charged to a license holder is based on the volume of the license holder's regulated business and other key factors. The commissioner may provide for collection of a single annual fee from a person licensed under Chapter 342, 348, or 371 to include amounts due for both licensing and examination.

SECTION 8. Section 14.302, Finance Code, is amended to read as follows:

Sec. 14.302. APPEAL OF LICENSE WITHHOLDING OR REVOCATION. An appeal of a decision of the commissioner refusing to grant a license to an applicant or revoking the license of a license holder shall be under the substantial evidence rule as provided by Chapter 2001, Government Code [~~by trial de novo~~].

SECTION 9. Section 341.001, Finance Code, is amended to read as follows:

Sec. 341.001. DEFINITIONS. In this subtitle:

(1) "Authorized lender" means a person who holds a license issued under Chapter 342, a bank, or a savings association.

(2) "Bank" means a person:

(A) organized as a state bank under Subtitle A, Title 3, or under similar laws of another state if the deposits of a bank from another state are insured by the Federal Deposit Insurance Corporation; or

(B) organized as a national bank under 12 U.S.C. Section 21 et seq., as subsequently amended.

(3) "Cash advance" means the total of the amount of cash or its equivalent that the borrower receives and the amount that is paid at the borrower's direction or request, on the borrower's behalf, or for the borrower's benefit.

- (4) "Commissioner" means the consumer credit commissioner.
- (5) "Credit union" means a person:
- (A) doing business under Subtitle D, Title 3; or
 - (B) organized under the Federal Credit Union Act (12 U.S.C. Section 1751 et seq.), as subsequently amended.
- (6) "Deferred presentment transaction" means a transaction in which:
- (A) a cash advance in whole or part is made in exchange for a personal check or authorization to debit a deposit account;
 - (B) the amount of the check or authorized debit equals the amount of the advance plus a fee; and
 - (C) the person making the advance agrees that the check will not be cashed or deposited or the authorized debit will not be made until a designated future date.
- (7) "Finance commission" means the Finance Commission of Texas or a subcommittee created by rule of the Finance Commission of Texas.
- (8) ~~(7)~~ "Interest" has the meaning assigned by Section 301.002 ~~[301.004]~~.
- (9) "Loan" has the meaning assigned by Section 301.002 and includes a sale-leaseback transaction and a deferred presentment transaction.
- (10) "Sale-leaseback transaction" means a transaction in which a person sells personal property used primarily for personal, family, or household use and the buyer of the property agrees to lease the property back to the seller. In a sale-leaseback transaction:
- (A) the buyer is a creditor and the seller is an obligor;
 - (B) an agreement to defer payment of a debt and an obligation to pay the debt are established; and
 - (C) any amount received by the buyer in excess of the price paid for the property by the buyer is interest subject to this subtitle.
- (11) ~~(8)~~ "Savings association" means a person:
- (A) organized as a state savings and loan association or savings bank under Subtitle B or C, Title 3, or under similar laws of another state if the deposits of the savings association from another state are insured by the Federal Deposit Insurance Corporation; or
 - (B) organized as a federal savings and loan association or savings bank under the Home Owners' Loan Act (12 U.S.C. Section 1461 et seq.), as subsequently amended.
- SECTION 10. Section 341.403, Finance Code, is amended by adding Subsections (c) and (d) to read as follows:
- (c) The finance commission may not adopt rules restricting advertising or competitive bidding by a license holder regulated by the Office of Consumer Credit Commissioner except to prohibit false, misleading, or deceptive practices.
- (d) In its rules to prohibit false, misleading, or deceptive practices, the finance commission may not include a rule that:
- (1) restricts the use of any medium for advertising;
 - (2) restricts the use of a license holder's personal appearance or voice in an advertisement;
 - (3) relates to the size or duration of an advertisement by the license holder; or
 - (4) restricts the license holder's advertisement under a trade name, unless the trade name is deceptive.

SECTION 11. Chapter 341, Finance Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. LICENSING AND
REGULATION IN GENERAL

Sec. 341.501. STAGGERED RENEWAL. The finance commission by rule may adopt a system under which licenses under this subtitle expire on various dates during the year. For the year in which the license expiration date is changed, the Office of Consumer Credit Commissioner shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Sec. 341.502. FORM OF LOAN CONTRACT. (a) A contract for a loan under Chapter 342, a retail installment transaction under Chapter 348, or a home equity loan regulated by the Office of Consumer Credit Commissioner, 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.

(b) The finance commission shall adopt rules governing the form of contracts to which this section applies. The rules must include model contracts complying with the rules and this section.

(c) A person governed by this section is not required to use a model contract. The person, however, may not use a contract other than a model contract unless the person has submitted the contract to the commissioner. The commissioner shall issue an order disapproving the contract if the commissioner determines that the contract does not comply with this section or rules adopted under this section.

(d) The person may begin using a contract submitted under Subsection (c) on the date it is submitted for review. If the commissioner issues an order disapproving the contract, the person may not use the contract after the order takes effect.

(e) A person may not represent that the commissioner's failure to disapprove a contract constitutes an approval of the contract by the commissioner, the Office of Consumer Credit Commissioner, or the finance commission.

SECTION 12. Section 342.005, Finance Code, is amended to read as follows:

Sec. 342.005. APPLICABILITY OF CHAPTER. 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(4)~~ [342.001(3)], 342.301, or 342.456 and is predominantly payable in monthly installments.

SECTION 13. Subchapter A, Chapter 342, Finance Code, is amended by adding Sections 342.007 and 342.008 to read as follows:

Sec. 342.007. DEFERRED PRESENTMENT TRANSACTION. The finance commission shall adopt rules providing for the regulation of deferred presentment transactions.

Sec. 342.008. ATTEMPT TO EVADE LAW. A person who is a party to a deferred presentment transaction may not evade the application of this subtitle or a rule

adopted under this section by use of any device, subterfuge, or pretense. Characterization of a required fee as a purchase of a good or service in connection with a deferred presentment transaction is a device, subterfuge, or pretense for the purposes of this section.

SECTION 14. Subsection (c), Section 342.101, Finance Code, is amended to read as follows:

(c) On the filing of each license application, the applicant shall pay to the commissioner for the license's year of issuance a license fee in an amount determined as provided by Section 14.107 ~~of:~~

~~(1) \$100 if the license is granted not later than June 30; or~~

~~(2) \$50 if the license is granted after June 30].~~

SECTION 15. Section 342.154, Finance Code, is amended to read as follows:

Sec. 342.154. ANNUAL LICENSE FEE. ~~[(a)]~~ Not later than December 1, a license holder shall pay to the commissioner for each license held an annual fee for the year beginning the next January 1, in an amount determined as provided by Section 14.107.

~~[(b) The annual fee for a license under this chapter is \$200 except that if, on September 30 preceding the date on which the annual fee is due, the gross unpaid balance of loans regulated under this chapter in the office for which the license is issued is \$100,000 or less, the annual fee is \$100.]~~

SECTION 16. Subsection (b), Section 346.204, Finance Code, is amended to read as follows:

(b) A change made under Subsection (a) that relates to an existing or future balance of a revolving credit account and that is adverse to the customer may not take effect before the first billing cycle that begins after the 90th day after the date of written notice of the change to the customer unless the amendment is made under Section 303.103 ~~[303.403]~~.

SECTION 17. Subchapter A, Chapter 348, Finance Code, is amended to clarify and confirm existing law by adding Section 348.012 to read as follows:

Sec. 348.012. APPLICABILITY OF INSURANCE PREMIUM FINANCING PROVISIONS. Chapter 24, Insurance Code, does not apply to a retail installment transaction.

SECTION 18. Chapter 348, Finance Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. LICENSING; ADMINISTRATION OF CHAPTER

Sec. 348.501. LICENSE REQUIRED. (a) A person may not act as a holder under this chapter unless the person:

(1) is an authorized lender or a credit union; or

(2) holds a license issued under this chapter.

(b) A person may not use any device, subterfuge, or pretense to evade the application of this section.

Sec. 348.502. APPLICATION REQUIREMENTS. (a) The application for a license under this chapter must:

(1) be under oath;

(2) identify the applicant's principal parties in interest; and

(3) contain other relevant information that the commissioner requires.

(b) On the filing of a license application, the applicant shall pay to the commissioner:

(1) an investigation fee not to exceed \$200; and
(2) for the license's year of issuance, a license fee in an amount determined as provided by Section 14.107.

Sec. 348.503. INVESTIGATION OF APPLICATION. On the filing of an application and payment of the required fees, the commissioner shall conduct an investigation to determine whether to issue the license.

Sec. 348.504. APPROVAL OR DENIAL OF APPLICATION. (a) The commissioner shall approve the application and issue to the applicant a license under this chapter if the commissioner finds that:

(1) the financial responsibility, experience, character, and general fitness of the applicant are sufficient to:

(A) command the confidence of the public; and

(B) warrant the belief that the business will be operated lawfully and fairly, within the purposes of this chapter; and

(2) the forms and contracts to be used by the applicant are appropriate and adequate to protect the interests of retail buyers.

(b) If the commissioner does not find the eligibility requirements of Subsection (a), the commissioner shall notify the applicant.

(c) If an applicant requests a hearing on the application not later than the 30th day after the date of notification under Subsection (b), the applicant is entitled to a hearing not later than the 60th day after the date of the request.

(d) The commissioner shall approve or deny the application not later than the 60th day after the date of the filing of a completed application with payment of the required fees, or if a hearing is held, after the date of the completion of the hearing on the application. The commissioner and the applicant may agree to a later date in writing.

Sec. 348.505. DISPOSITION OF FEES ON DENIAL OF APPLICATION. If the commissioner denies the application, the commissioner shall retain the investigation fee and shall return to the applicant the license fee submitted with the application.

Sec. 348.506. ANNUAL LICENSE FEE. Not later than December 1, a license holder shall pay to the commissioner for each license held an annual fee for the year beginning the next January 1, in an amount determined as provided by Section 14.107.

Sec. 348.507. EXPIRATION OF LICENSE ON FAILURE TO PAY ANNUAL FEE. If the annual fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on the later of:

(1) that day; or

(2) December 31 of the last year for which an annual fee was paid.

Sec. 348.508. LICENSE SUSPENSION OR REVOCATION. After notice and a hearing the commissioner may suspend or revoke a license if the commissioner finds that:

(1) the license holder failed to pay the annual license fee, an examination fee, an investigation fee, or another charge imposed by the commissioner;

(2) the license holder, knowingly or without the exercise of due care, violated this chapter or a rule adopted or order issued under this chapter; or

(3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application.

Sec. 348.509. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE OF NEW LICENSE AFTER REVOCATION. The commissioner may reinstate a suspended license or issue a new license on application to a person whose license has been revoked if at the time of the reinstatement or issuance no fact or condition exists that clearly would have justified the commissioner's denial of an original application for the license.

Sec. 348.510. SURRENDER OF LICENSE. A license holder may surrender a license issued under this chapter by delivering to the commissioner:

- (1) the license; and
- (2) a written notice of the license's surrender.

Sec. 348.511. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR SURRENDER. (a) The suspension, revocation, or surrender of a license issued under this chapter does not affect the obligation of a contract between the license holder and a retail buyer entered into before the suspension, revocation, or surrender.

(b) Surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender.

Sec. 348.512. TRANSFER OR ASSIGNMENT OF LICENSE. A license may be transferred or assigned only with the approval of the commissioner.

Sec. 348.513. ADOPTION OF RULES. (a) The finance commission may adopt rules to enforce this chapter.

(b) The commissioner shall recommend proposed rules to the finance commission.

Sec. 348.514. EXAMINATION; ACCESS TO RECORDS. (a) At the times the commissioner considers necessary, the commissioner or the commissioner's representative shall:

- (1) examine each place of business of each license holder; and
- (2) investigate the license holder's transactions and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to the business regulated under this chapter.

(b) The license holder shall:

- (1) give the commissioner or the commissioner's representative free access to the license holder's office, place of business, files, safes, and vaults; and
- (2) allow the commissioner or the commissioner's representative to make a copy of an item that may be investigated under Subsection (a)(2).

(c) During an examination the commissioner or the commissioner's representative may administer oaths and examine any person under oath on any subject pertinent to a matter that the commissioner is authorized or required to consider, investigate, or secure information about under this chapter.

(d) Information obtained under this section is confidential.

(e) A license holder's violation of Subsection (b) is a ground for the suspension or revocation of the license.

(f) An examination of a license holder's place of business may be made only:

- (1) after advance notice; and
- (2) during normal business hours.

Sec. 348.515. GENERAL INVESTIGATION. To discover a violation of this chapter or to obtain information required under this chapter, the commissioner or the commissioner's representative may investigate the records, including books, accounts, papers, and correspondence, of a person, including a license holder, who the commissioner has reasonable cause to believe is violating this chapter, regardless of whether the person claims to not be subject to this chapter.

Sec. 348.516. PAYMENT OF EXAMINATION COSTS AND ADMINISTRATION EXPENSES. A license holder shall pay to the commissioner an amount determined as provided by Section 14.107 and assessed by the commissioner to cover the direct and indirect costs of an examination and a proportionate share of general administrative expenses.

Sec. 348.517. LICENSE HOLDER'S RECORDS. (a) A license holder shall maintain a record of each retail installment transaction made under this chapter as is necessary to enable the commissioner to determine whether the license holder is complying with this chapter.

(b) A license holder shall keep the record until the later of:

(1) the third anniversary of the date the last payment was made on the retail installment transaction; or

(2) the second anniversary of the date on which the final entry is made in the record.

(c) A record described by Subsection (a) must be prepared in accordance with accepted accounting practices.

(d) The commissioner shall accept a license holder's system of records if the system discloses the information reasonably required under Subsection (a).

(e) A license holder shall keep each obligation signed by a retail buyer at an office in this state designated by the license holder unless the obligation is transferred under an agreement that gives the commissioner access to the obligation.

Sec. 348.518. SHARING OF INFORMATION. To ensure consistent enforcement of law and minimization of regulatory burdens, the commissioner and the Texas Department of Transportation may share information, including criminal history information, relating to a person licensed under this chapter. Information otherwise confidential remains confidential after it is shared under this section.

SECTION 19. Section 371.055, Finance Code, is amended to read as follows:

Sec. 371.055. FEES; PROOF OF INSURANCE. An applicant must submit with the application:

(1) an investigation fee of:

(A) \$500 if the applicant does not hold a license; or

(B) \$250 if the application:

(i) is for an additional license for a separate location; or

(ii) involves substantially identical principals and owners of a licensed pawnshop at a separate location;

(2) an annual fee in an amount determined as provided by Section 14.107 [~~of \$100~~]; and

(3) proof of general liability and fire insurance in a reasonable amount and form required by the commissioner.

SECTION 20. Subsection (a), Section 371.064, Finance Code, is amended to read as follows:

(a) Not later than December 1, a pawnbroker shall pay to the commissioner for each license held an annual fee in an amount determined as provided by Section 14.107 [~~of \$125~~] for the year beginning the next January 1.

SECTION 21. Subsection (c), Section 371.159, Finance Code, is amended to read as follows:

(c) A pawn service charge may not exceed an amount equal to:

(1) 20 percent of the total amount financed for one month if that amount is less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference amount of \$30;

(2) 15 percent of the total amount financed for one month if that amount is more than the amount computed for Subdivision (1) but less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference amount of \$200 [~~\$100~~];

(3) 2 1/2 percent of the total amount financed for one month if that amount is more than the amount computed for Subdivision (2) but less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference amount of \$300; or

(4) 1 percent of the total amount financed for one month if that amount is more than the amount computed for Subdivision (3).

SECTION 22. Section 371.169, Finance Code, is amended to read as follows:

Sec. 371.169. UNREDEEMED PLEDGED GOODS; FORFEITURE. (a) A pawnbroker shall hold pledged goods not redeemed by the pledgor on or before the maturity date stated in the pawn ticket issued in connection with a pawn transaction for at least 30 [~~60~~] days after that date.

(b) On or before the 30th [~~60th~~] day after the original maturity date, the pledgor may redeem the pledged goods by paying:

(1) the originally agreed redemption price; and

(2) an additional pawn service charge equal to one-thirtieth of the original monthly pawn service charge for each day after the original maturity date, including the day on which the pledged goods are finally redeemed.

(c) Pledged goods not redeemed on or before the 30th [~~60th~~] day after the original maturity date may, at the option of the pawnbroker, be forfeited to the pawnbroker.

SECTION 23. Subsection (a), Section 411.095, Government Code, is amended to read as follows:

(a) The consumer credit commissioner is entitled to obtain from the department criminal history record information that relates to a person who is[-

~~(+)] an applicant for or holder of a license under Chapter 342, 348, or 371, Finance Code[-; or~~

~~[(2) the holder of a license under that Act].~~

SECTION 24. Section 371.065, Finance Code, is repealed.

SECTION 25. Sections 348.401 and 348.402, Finance Code, are repealed.

SECTION 26. The Finance Commission of Texas and the consumer credit commissioner shall conduct a study of mortgage lending practices with emphasis on identifying possible predatory and discriminatory lending patterns or practices. In conducting the study, the agencies shall collect data from entities making mortgage loans about mortgage loans using the data formats of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. Section 2801 et seq.) and other data fields necessary to identify possible predatory practices. In conducting the study, the agencies shall also study and consider parameters that could be used to consistently classify credit risk among mortgage loans for the purpose of assessing possible predatory or discriminatory lending practices. The agencies shall prepare a report detailing the findings and recommendations resulting from the study and deliver the report to the lieutenant governor, the speaker of the house of representatives, and legislative committees dealing with lending entities before December 1, 2002.

SECTION 27. (a) Except as otherwise provided by this section, this Act takes effect September 1, 2001.

(b) Section 17 of 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 17 of this Act takes effect September 1, 2001.

(c) Section 25 of this Act takes effect September 1, 2002.

(d) The requirement that a person hold a license under Subchapter F, Chapter 348, Finance Code, as added by this Act, applies only on and after September 1, 2002.

Floor Amendment No. 1

Amend **CSSB 317** by adding a new SECTION 24 to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION 24. Insert a new Sec. 342.007, Finance Code to read as follows:

Sec. 342.007. CERTAIN ACTIVITIES PROHIBITED. No person shall transact a loan that is secured, in whole or in part, by a consumer's personal check or other instrument for the payment of money, or in exchange for the consumer's authorization to debit the consumer's deposit account, for any person or any entity, or assist in any way in the origination of any such loan on behalf of or in conjunction with any other person or entity.

Floor Amendment No. 3

Amend **CSSB 317** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION _____. Subchapter F, Chapter 349, Finance Code, is amended by adding Section 349.503 to read as follows:

Sec. 349.503. CERTAIN PROCEEDINGS IN CONNECTION WITH SALE-LEASEBACK TRANSACTION. (a) If a buyer in a sale-leaseback transaction requires the seller to provide a check as security for the transaction, the buyer may not file or threaten to file a charge, complaint, or criminal prosecution under Section 31.03, 31.04, or 32.41, Penal Code, based on nonpayment of the check.

(b) A buyer who violates Subsection (a) commits an offense. An offense under this section is a misdemeanor punishable by a fine of not more than \$1,000.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 317** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS appropriately:

SECTION _____. (a) Subchapter C, Chapter 346, Finance Code, is amended by adding Section 346.206 to read as follows:

Sec. 346.206. CASH ADVANCE. In connection with a revolving credit account, a creditor shall apply a payment made on the account first to the unpaid balance of any cash advance made or issued with respect to the account.

(b) Section 346.206, Finance Code, as added by this section, applies only to a cash advance transaction made pursuant to an open-end account credit agreement under which credit card transactions are made that is entered into, amended, or renewed on or after the effective date of this section.

Floor Amendment No. 2 on Third Reading

Amend **CSSB 317** on third reading by striking SECTION 24 of the bill as added by the S. Turner amendment No. 1 on second reading and substituting it with the following:

SECTION 24. Insert a new Sec. 342.007, Finance Code to read as follows:

Sec. 342.009. CERTAIN ACTIVITIES PROHIBITED. No person shall assist a consumer in obtaining a loan that is secured, in whole or in part, by a consumer's personal check or other instrument for the payment of money, or in exchange for the consumer's authorization to debit the consumer's deposit account, at a rate of interest which otherwise would be prohibited by state law. Section 1.105, Business and Commerce Code, shall not apply to loans described under this section.

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 317** 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; Shapleigh, Carona, Madla, and Bivins.

CONFERENCE COMMITTEE ON HOUSE BILL 1862

Senator Van de Putte 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 1862** 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 1862** 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 Van de Putte, Chair; Carona, Harris, Fraser, and Lucio.

SENATE BILL 588 WITH HOUSE AMENDMENTS

Senator Lindsay called **SB 588** 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 588** in SECTION 1 of the bill, in amended Subsection (a), Section 2, Cultural Education Facilities Finance Corporation Act (Article 1528m, Vernon's Texas Civil Statutes) (Engrossed Version, page 1, line 14), by striking "religious groups".

Floor Amendment No. 2

Amend **SB 588** in SECTION 1 of the bill, in amended Section 2(a)(1)(B), Cultural Education Facilities Finance Corporation Act (Article 1528m, Vernon's Texas Civil Statutes) (Committee Printing, page 1, line 18), between "public health and safety," and "child care" by inserting "conservation and preservation of the environment or natural resources,".

The amendments were read.

Senator Lindsay moved to concur in the House amendments to **SB 588**.

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

Present-not voting: Mr. President.

SENATE BILL 1165 WITH HOUSE AMENDMENTS

Senator Truan called **SB 1165** 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 1165** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the qualifications for appointment as the adjutant general.

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

SECTION 1. Section 431.022, Government Code, is amended by amending Subsections (a) and (b) to read as follows:

(a) The adjutant general is the head of the adjutant general's department and controls the military department of the state. The adjutant general is subordinate only to the governor in matters pertaining to the military department of the state and the state military forces. The adjutant general has the rank not to exceed lieutenant [~~of major~~] general at the discretion of the governor. Federal recognition is at the rank authorized by the National Guard Bureau, not to exceed lieutenant general.

(b) The adjutant general is appointed by the governor, with the advice and consent of the senate if in session, to a term expiring February 1 of each odd-numbered year. To be qualified for appointment as adjutant general a person must:

(1) when appointed be serving as a federally recognized officer of not less than field grade in the Texas National Guard;

(2) have previously served on active duty or active duty for training with the army or air force; and

(3) have completed at least five [~~10~~] years' service as a federally recognized commissioned officer with an active unit of the Texas National Guard.

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

Floor Amendment No. 1

Amend **CSSB 1165** as follows:

(1) In SECTION 1 of the bill, in the introductory language (House committee printing, page 1, line 6), strike "Subsections (a) and (b)" and substitute "Subsection (a)".

(2) In SECTION 1 of the bill, strike amended Section 431.022(b), Government Code (House committee printing, page 1, lines 15-24 and page 2, lines 1 and 2).

(3) After SECTION 1 of the bill (House committee printing, page 2, between lines 2 and 3), add the following new SECTION 2 of the bill and renumber the current SECTION 2 as SECTION 3:

SECTION 2. Subchapter B, Chapter 431, Government Code, is amended by adding Section 431.0221 to read as follows:

Sec. 431.0221. ADDITIONAL REQUIREMENTS FOR ADJUTANT GENERAL. (a) Notwithstanding Section 431.022(b)(3), until September 1, 2005, the adjutant general must have completed at least:

(1) five years' service as a federally recognized commissioned officer with an active unit of the Texas National Guard; and

(2) 10 years' service as a federally recognized commissioned officer with an active unit of the National Guard of the United States.

(b) This section expires September 1, 2005.

The amendments were read.

On motion of Senator Truan, the Senate concurred in the House amendments to **SB 1165** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 1203

Senator Fraser 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 1203** 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 1203** 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 Fraser, Chair; Brown, Shapiro, Armbrister, and Madla.

SENATE BILL 1686 WITH HOUSE AMENDMENTS

Senator Jackson called **SB 1686** 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 1686** as follows:

(1) On page 4, line 25, insert the following sentence before the sentence beginning with the words "The election": "Qualifications for voting in any election in the district are the same as those set forth in section 10 herein as qualifications necessary to serve as a director for the district."

(2) On page 6, strike Section 10(a) and insert the following: "The district is governed by an initial board of five directors who shall serve until their successors are elected as provided for herein."

(3) On page 8, line 23, insert after "necessary.": "The board shall hold successive elections of officers every two years after the election of the initial officers as provided for herein."

Committee Amendment No. 2

Amend **SB 1686** as follows:

- (1) by striking the sentence that begins on page 13, line 3.
- (2) by striking the sentence that begins on page 13, line 9.

Floor Amendment No. 3

Amend House Committee Substitute to **SB 1686** as follows:

On page 1, line 11, between "Act" and "." insert the following: other than the creation of a Navigation District or a Port Authority

The amendments were read.

Senator Jackson moved to concur in the House amendments to **SB 1686**.

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

Present-not voting: Mr. President.

SENATE RESOLUTION 1196

Senator Moncrief 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 is suspended, as provided by Senate Rule 12.08, to enable the conference committee appointed to resolve the differences on S.B. No. 65, relating to the regulation of telepharmacy as a method to dispense drugs, to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter that is not included in either the house or senate version of the bill, to read as follows:

SECTION 4. Section 58.253(a), Utilities Code, is amended to read as follows:

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

- (1) an educational institution;
- (2) a library;
- (3) a nonprofit telemedicine center;
- (4) a public or not-for-profit hospital;
- (5) a project funded by the telecommunications infrastructure fund under Subchapter C, Chapter 57, except for a telepharmacy system; or

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

Explanation: This change is necessary to provide an exception to the provision of private network services.

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 1684 WITH HOUSE AMENDMENT

Senator Jackson called **SB 1684** 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 1684** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to removal of malt liquor, ale, and beer from the premises of a holder of a mixed beverage permit and a brewpub license.

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

SECTION 1. Section 28.10, Alcoholic Beverage Code, is amended to read as follows:

Sec. 28.10. CONSUMPTION RESTRICTED TO PREMISES; ~~EXCEPTIONS.~~

(a) Except as provided [~~permitted~~] by [~~Subsection (b) of~~] this section or Section 28.01(b) [~~and by Subsection (b) of Section 28.01~~], a mixed beverage permittee may not sell an alcoholic beverage to another mixed beverage permittee or to any other person except for consumption on the seller's licensed premises.

(b) A mixed beverage permittee may not permit any person to take any alcoholic beverage purchased on the licensed premises from the premises where sold, except that:

(1) a person who orders wine with food and has a portion of the open container remaining may remove the open container of wine from the premises; and

(2) a mixed beverage permittee who also holds a brewpub license may sell or offer without charge on the premises of the brewpub, to an ultimate consumer for consumption on or off the premises, malt liquor, ale, or beer produced by the permittee, in or from a lawful container in an amount that does not exceed one-half barrel, provided that the aggregate amount of malt liquor, ale, and beer removed from the premises under this subdivision does not exceed 1,000 barrels annually.

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

The amendment was read.

On motion of Senator Jackson, the Senate concurred in the House amendment to **SB 1684** by a viva voce vote.

SENATE BILL 1763 WITH HOUSE AMENDMENT

Senator Moncrief called **SB 1763** 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 1763** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the provision of information about patient assistance programs offered by pharmaceutical companies.

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

SECTION 1. Chapter 531, Government Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. PROVISION OF INFORMATION ABOUT
PATIENT ASSISTANCE PROGRAMS

Sec. 531.301. DEFINITION. In this subchapter, "patient assistance program" means a program offered by a pharmaceutical company under which the company provides a drug to persons in need of assistance at no charge or at a substantially reduced cost. The term does not include the provision of a drug as part of a clinical trial.

Sec. 531.302. PROVIDING INFORMATION TO COMMISSION. Each pharmaceutical company that does business in this state and that offers a patient assistance program shall inform the commission of the existence of the program, the eligibility requirements for the program, the drugs covered by the program, and information such as a telephone number used for applying for the program.

Sec. 531.303. TOLL-FREE TELEPHONE NUMBER. (a) The commission shall establish a system under which members of the public can call a toll-free telephone number to obtain information about available patient assistance programs. The commission shall ensure that the system is staffed at least during normal business hours with persons who can:

(1) determine whether a patient assistance program is offered for a particular drug;

(2) determine whether a person may be eligible to participate in a program; and

(3) assist persons who wish to apply for a program.

(b) The commission shall publicize the telephone number to pharmacies and prescribers of drugs.

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

The amendment was read.

Senator Moncrief moved to concur in the House amendment to **SB 1763**.

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

Present-not voting: Mr. President.

SENATE BILL 538 WITH HOUSE AMENDMENT

Senator Lucio called **SB 538** 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 538** as follows:

On page 2, line 1, strike, [~~institutions of higher~~], and insert career awareness and postsecondary

The amendment was read.

On motion of Senator Lucio, the Senate concurred in the House amendment to **SB 538** by a viva voce vote.

SENATE BILL 63 WITH HOUSE AMENDMENT

Senator Moncrief called **SB 63** 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 63** as follows:

(1) In SECTION 1 of the bill, in new Section 171.852(1), Tax Code, between "hired" and "on" (senate engrossment, page 1, line 15), insert "for a position located or based in this state".

(2) In SECTION 1 of the bill, in new Section 171.852(3)(A), Tax Code, between "corporation" and "for" (senate engrossment, page 1, line 23), insert "in a position located or based in this state".

(3) In SECTION 1 of the bill, strike new Section 171.853(b), Tax Code (senate engrossment, page 2, lines 7-8), and substitute:

(b) A corporation may claim the credit only for wages paid the qualified employee:

(1) for a position located or based in this state; and

(2) during the first two years of employment.

The amendment was read.

On motion of Senator Moncrief, the Senate concurred in the House amendment to **SB 63** by a viva voce vote.

SENATE BILL 1689 WITH HOUSE AMENDMENT

Senator Ellis called **SB 1689** 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 1689** as follows:

On page 1, line 16, insert the following after the period:

Farm mutuals, local mutual aid associations and burial associations are not subject to the franchise tax.

On page 2, line 3, delete "Except as otherwise provided in Subsection (k), a" and insert "A".

On page 2, strike the language on lines 8 through 12.

On page 2, line 16, insert a period after "2001" and delete the language on lines 17 through 19.

The amendment was read.

On motion of Senator Ellis, the Senate concurred in the House amendment to **SB 1689** by a viva voce vote.

SENATE BILL 1475 WITH HOUSE AMENDMENT

Senator Duncan called **SB 1475** 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 1475** as follows:

(1) In Section 40.101(3), Human Resources Code, as added by SECTION 1 of the bill (House Committee Printing, page 1, lines 16 and 17), strike "child abuse and neglect prevention operating fund" and substitute "child abuse and neglect prevention operating fund account".

(2) In Section 40.101(5), Human Resources Code, as added by SECTION 1 of the bill (House Committee Printing, page 2, line 1), strike "prevention trust fund" and substitute "prevention trust fund account".

(3) Strike Section 40.105, Human Resources Code, as added by SECTION 1 of the bill (House Committee Printing, page 3, line 9, through page 4, line 3), and substitute the following:

Sec. 40.105. CHILD ABUSE AND NEGLECT PREVENTION TRUST FUND ACCOUNT. (a) The child abuse and neglect prevention trust fund account is an account in the general revenue fund.

(b) The department may transfer money contained in the trust fund to the operating fund at any time. However, during a fiscal year the department may not transfer more than the amount appropriated for the operating fund for that fiscal year. Money transferred to the operating fund that was originally deposited to the credit of the trust fund under Section 118.022, Local Government Code, may be used only for child abuse and neglect primary prevention programs.

(c) Interest earned on the trust fund shall be credited to the trust fund.

(d) The trust fund is exempt from the application of Section 403.095, Government Code.

(4) In the heading to Section 40.106, Human Resources Code, as added by SECTION 1 of the bill (House Committee Printing, page 4, line 4), strike "DEPARTMENT OPERATING FUND" and substitute "DEPARTMENT OPERATING FUND ACCOUNT".

(5) In Section 40.106(a), Human Resources Code, as added by SECTION 1 of the bill (House Committee Printing, page 4, line 6), strike "operating fund is a special fund in the state treasury" and substitute "operating fund account is an account in the general revenue fund".

(6) In Section 40.106, Human Resources Code, as added by SECTION 1 of the bill (House Committee Printing, page 4, between lines 12 and 13), insert the following:

(d) The operating fund is exempt from the application of Section 403.095, Government Code.

(7) In Section 118.022(b), Local Government Code, as amended by SECTION 7 of the bill (House Committee Printing, page 11, line 3), strike "prevention [children's] trust fund established" and substitute "prevention [children's] trust fund account established".

(8) In Subdivision (2) of SECTION 10 of the bill (House Committee Printing, page 11, lines 23 and 24), strike "a reference in law to the children's trust fund means the child abuse and neglect prevention trust fund" and substitute "a reference in law to the children's trust fund means the child abuse and neglect prevention trust fund account".

The amendment was read.

On motion of Senator Duncan, the Senate concurred in the House amendment to **SB 1475** by a viva voce vote.

SENATE RESOLUTION 1195

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 House Bill No. 658, relating to the revenues of public institutions of higher education and to the issuance of revenue bonds to fund capital projects at those institutions, to consider and take action on the following specific matters:

(1) Senate Rule 12.03(1) is suspended to permit the committee to amend proposed Section 55.1731(a), Education Code, to change text not in disagreement to read as follows:

(a) In addition to the other authority granted by this subchapter, the board of regents of The Texas A&M University System may issue in accordance with this subchapter and in accordance with a systemwide revenue financing program adopted by the board bonds for the following institutions not to exceed the following aggregate principal amounts to finance projects specified as follows:

(1) Prairie View A&M University:

(A) \$53 million to construct or renovate engineering facilities, construct and renovate an architecture building, and carry out other campus renovations; and

(2) Tarleton State University, \$18.7 million for a library addition and renovation of a mathematics building;

(3) Texas A&M University—Commerce, \$14,960,000 to replace a science building wing;

(4) Texas A&M University—Corpus Christi, \$34 million to construct a classroom and laboratory facility and for construction of the Harte Research Center;

(6) Texas A&M University at Galveston, \$10,030,000 to construct an engineering building;

(7) Texas A&M University—Kingsville, \$20,060,000 to construct facilities for a pharmacy school and to construct a student services building;

(8) Texas A&M University—Texarkana, \$17 million to construct a health science building and for library renovation;

(9) West Texas A&M University, \$22,780,000 to construct a fine arts complex; and

(10) The Texas A&M University Health Science Center, \$14.3 million for construction of classroom and faculty office facilities for the School of Rural Public Health.

Explanation: The change is necessary to provide The Texas A&M University System appropriate bond authority to finance capital improvements.

(2) Senate Rule 12.03(1) is suspended to permit the committee to amend proposed Section 55.1732(a), Education Code, to change text not in disagreement to read as follows:

(a) In addition to the other authority granted by this subchapter, the board of regents of The University of Texas System may issue in accordance with this subchapter and in accordance with a systemwide revenue financing program adopted by the board bonds for the following institutions not to exceed the following aggregate principal amounts to finance projects specified as follows:

(2) The University of Texas at Brownsville, \$26,010,000 to construct a life and health science and education facility (Phase II) and to procure and install permanent equipment and other fixtures in the facility;

...

(5) The University of Texas—Pan American, \$29,950,000 for education complex, library, and multipurpose center renovation and construction;

(6) The University of Texas of the Permian Basin, \$5,610,000 for integrated Mesa Building renovations and gymnasium renovations;

...

(8) The University of Texas at Tyler, \$20,910,000 to construct an engineering, sciences, and technology building and make other physical plant improvements;

...

(10) The University of Texas Medical Branch at Galveston, \$20 million to renovate and expand research facilities;

...

(12) The University of Texas Health Science Center at San Antonio, \$28.9 million to construct a facility for student services and academic administration and to construct and develop a facility at the Laredo Extension Campus for educational and administrative purposes;

(13) the Regional Academic Health Center established under Section 74.611, \$25.5 million to construct a teaching and learning laboratory in or near the city of Harlingen;

Explanation: The change is necessary to provide The University of Texas System appropriate bond authority to finance capital improvements.

(3) Senate Rule 12.03(1) is suspended to permit the committee to amend proposed Section 55.1733(a), Education Code, to change text not in disagreement to read as follows:

(a) In addition to the other authority granted by this subchapter, the board of regents of the University of Houston System may issue in accordance with this subchapter and in accordance with a systemwide revenue financing program adopted by the board bonds for the following institutions not to exceed the following aggregate principal amounts to finance projects specified as follows:

(1) the University of Houston, \$51 million to construct science and engineering research and classroom facilities;

(2) the University of Houston—Downtown, \$18,232,500 to construct a classroom building;

(3) the University of Houston—Clear Lake, \$30,918,750 to construct a student services and classroom building; and

(4) the University of Houston—Victoria, \$2,805,000 to remodel the University West facility, acquire and renovate a facility services building, and renovate and expand a facility for the center for community initiatives.

Explanation: The change is necessary to provide the University of Houston System appropriate bond authority to finance capital improvements.

(4) Senate Rule 12.03(1) is suspended to permit the committee to amend proposed Section 55.1734(a), Education Code, to change text not in disagreement to read as follows:

(a) In addition to the other authority granted by this subchapter, the board of regents of the Texas State University System may issue in accordance with this subchapter and in accordance with a systemwide revenue financing program adopted by the board bonds for the following institutions not to exceed the following aggregate principal amounts to finance projects specified as follows:

(1) Angelo State University, \$16,917,550 to expand and renovate institutional facilities;

(2) Lamar University—Beaumont, \$21,792,096 to renovate and repair campus buildings;

(3) Lamar Institute of Technology, \$5,301,960 to renovate Gentry Hall and convert it to classroom and laboratory use;

(4) Lamar State College—Orange, \$2,125,000 for campus landscaping, renovation of the old library for physical plant purposes, renovation of the Main Building and Electronics Commerce Resource Center, and demolition of the old physical plant building;

(5) Lamar State College—Port Arthur, \$7,650,000 to construct a performing arts and classroom building and to expand the Gates Memorial Library and develop an adjacent plaza;

(7) Southwest Texas State University, \$18,436,500 to construct a business building; and

(8) Sul Ross State University, \$13,175,000 to renovate and expand the range animal science facility and science building annex and to carry out other building renovations.

Explanation: The change is necessary to provide the Texas State University System appropriate bond authority to finance capital improvements.

(5) Senate Rule 12.03(1) is suspended to permit the committee to amend proposed Section 55.1736(a), Education Code, to change text not in disagreement to read as follows:

(a) In addition to the other authority granted by this subchapter, the board of regents of Texas Woman's University may issue bonds in accordance with this subchapter in the aggregate principal amount not to exceed \$25,797,500 to finance the renovation of academic and administrative buildings at Texas Woman's University.

Explanation: The change is necessary to provide the board of regents of Texas Woman's University appropriate bond authority to finance capital improvements.

(6) Senate Rule 12.03(1) is suspended to permit the committee to amend proposed Section 55.1737(a), Education Code, to change text not in disagreement to read as follows:

(a) In addition to the other authority granted by this subchapter, the board of regents of Midwestern State University may issue in accordance with this subchapter bonds not to exceed \$8,967,500 to finance campus improvements at Midwestern State University.

Explanation: The change is necessary to provide the board of regents of Midwestern State University appropriate bond authority to finance capital improvements.

(7) Senate Rule 12.03(1) is suspended to permit the committee to amend proposed Section 55.1738(a), Education Code, to change text not in disagreement to read as follows:

(a) In addition to the other authority granted by this subchapter, the board of regents of Stephen F. Austin State University may issue in accordance with this subchapter bonds not to exceed \$14,070,000 to finance campus infrastructure improvements, the construction of a telecommunications building, the renovation of power plant facilities, and the replacement or renovation of the Birdwell Building at Stephen F. Austin State University.

Explanation: The change is necessary to provide the board of regents of Stephen F. Austin State University appropriate bond authority to finance capital improvements.

(8) Senate Rule 12.03(1) is suspended to permit the committee to amend proposed Section 55.1739(a), Education Code, to change text not in disagreement to read as follows:

(a) In addition to the other authority granted by this subchapter, the board of regents of the Texas Tech University System may issue in accordance with this subchapter and in accordance with a systemwide revenue financing program adopted by the board bonds for the following institutions not to exceed the following aggregate principal amounts for projects specified as follows:

(2) Texas Tech University Health Sciences Center, \$66,882,525 to construct a clinical and research facility in the city of Lubbock and to construct facilities to support the center's educational programs in the city of El Paso.

Explanation: The change is necessary to provide the Texas Tech University System appropriate bond authority to finance capital improvements.

(9) Senate Rule 12.03(1) is suspended to permit the committee to amend proposed Section 55.17391(a), Education Code, to change text not in disagreement to read as follows:

(a) In addition to other authority granted by this subchapter, the board of regents of Texas Southern University may issue in accordance with this subchapter bonds not to exceed \$79 million to finance the construction of a science building, the construction of a building for the school of public affairs, the renovation of campus facilities, including electrical and piping systems, and campus landscaping.

Explanation: The change is necessary to provide the board of regents of Texas Southern University appropriate bond authority to finance capital improvements.

(10) Senate Rule 12.03(1) is suspended to permit the committee to amend proposed Section 55.17392(a), Education Code, to change text not in disagreement to read as follows:

(a) The board of regents of the Texas State Technical College System may issue in accordance with this subchapter and in accordance with a systemwide revenue financing program adopted by the board bonds for the following institutions not to exceed the following aggregate principal amounts for projects specified as follows:

(1) Texas State Technical College—Harlingen, \$3.4 million to construct a facility for a learning resource center and distance learning center;

(2) Texas State Technical College—Marshall, \$1,785,000 to construct a facility for a library and administrative activities;

(3) Texas State Technical College—Waco, \$3.4 million to renovate the industrial technology center; and

(4) Texas State Technical College—West Texas, \$2,295,000 to construct a transportation technologies building.

Explanation: The change is necessary to provide the board of regents of the Texas State Technical College System appropriate bond authority to finance capital improvements.

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 900

Senator Wentworth 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 900** 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 900** 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 Wentworth, Chair; Brown, Jackson, West, and Lindsay.

SENATE BILL 1308 WITH HOUSE AMENDMENT

Senator Barrientos called **SB 1308** 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 1308** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to a county's authority to set a fee for certain permits.

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

SECTION 1. Subchapter A, Chapter 251, Transportation Code, is amended by adding Section 251.017 to read as follows:

Sec. 251.017. COUNTY AUTHORITY TO SET FEE. The commissioners court of a county may set a reasonable fee for the county's issuance of a permit authorized by this chapter for which a fee is not specifically prescribed. The fee must be set and itemized in the county's budget as part of the budget preparation process.

SECTION 2. Subchapter I, Chapter 16, Water Code, is amended by adding Section 16.324 to read as follows:

Sec. 16.324. COUNTY AUTHORITY TO SET FEE. The commissioners court of a county may set a reasonable fee for the county's issuance of a permit authorized by this subchapter for which a fee is not specifically prescribed. The fee must be set and itemized in the county's budget as part of the budget preparation process.

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

The amendment was read.

On motion of Senator Barrientos, the Senate concurred in the House amendment to **SB 1308** by a viva voce vote.

GUESTS PRESENTED

Senator Shapiro was recognized and introduced to the Senate a delegation from Leadership Allen.

The Senate welcomed its guests.

SENATE BILL 907 WITH HOUSE AMENDMENT

Senator Shapleigh called **SB 907** 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 907** by striking the second sentence of Subsection (a), SECTION 1 of the bill (Engrossed Version, page 1, lines 9-12), and substituting:

As part of its study, the department shall meet with appropriate persons from military installations in this state and representatives of affected municipalities and counties to identify the strategic deployment routes and highways and intermodal facilities most often used by the military or that may be needed for future missions.

The amendment was read.

Senator Shapleigh moved to concur in the House amendment to **SB 907**.

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

Present-not voting: Mr. President.

SENATE BILL 896 WITH HOUSE AMENDMENT

Senator Shapiro called **SB 896** 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

SB 896 is amended by adding a new Section 3 to read as follows and renumbering all following sections accordingly:

SECTION 3. Subtitle C, Title 6, Transportation Code, is amended by adding Chapter 258 to read as follows:

CHAPTER 258. ACQUISITION OF PUBLIC INTEREST IN
ROAD BY ADOPTION OF COUNTY ROAD MAP

Sec. 258.001. ACQUISITION OF PUBLIC INTEREST IN ROAD. Notwithstanding Chapter 281, a county may acquire a public interest in a road as provided by this chapter.

Sec. 258.002. ADOPTION OF COUNTY ROAD MAP. (a) The commissioners court of a county may propose a county road map that includes each road in which the county claims a public interest:

(1) under Chapter 281 or other law; or

(2) as a result of having continuously maintained the road with public funds beginning before September 1, 1981.

(b) A commissioners court that proposes a county road map under this section shall hold a public meeting at which a person asserting a private right, title, or interest in a road in which the county has claimed a public interest may appear before the commissioners court to protest the county's claim. A person asserting a private right, title, or interest in a road may also file a written protest with the county judge at any time before the public meeting. The commissioners court shall appoint a jury of view consisting of five property owners who have no interest in the outcome of the protest to determine, by a majority vote after a public hearing and an examination of the county's road maintenance records and other information, the validity of the county's claim of public interest in the road. A county has a valid claim in a road if it provides written records or other information documenting the county's continuous maintenance of the road beginning before September 1, 1981. The determination of the jury of view is binding on the commissioners court, and the commissioners court shall revise the proposed county road map accordingly.

(c) The commissioners court shall publish at least once a week in a newspaper of general circulation in the county for at least four consecutive weeks preceding the date of the public meeting a notice:

(1) advising the public that the commissioners court has proposed a county road map including each road in which the county claims a public interest;

(2) identifying a location at the courthouse at which the proposed map will be available to the public during regular business hours; and

(3) stating the date and location of the public meeting.

(d) The commissioners court shall display the proposed map at the location and during the time described in the notice from the date on which notice is first published through the date on which the commissioners court formally adopts the proposed map. The map must be legible and not less than one inch equals 2,000 feet in scale.

(e) The commissioners court may formally adopt the proposed map, as revised after public comment and a determination by the jury of view, only at a public meeting held before the 90th day following the date of the initial public meeting required by Subsection (b).

(f) If a person asserting a private right, title, or interest in a road that the county has included in the proposed map protests in writing or in person as provided by Subsection (b) before the conclusion of the public hearing, the county may not take possession of the road, but after the conclusion of the hearing the county may bring suit against the person for adverse possession of the right, title, or interest in the road.

(g) The county clerk shall keep a county road map adopted under this section in a place accessible to the public.

(h) The failure to include on a county road map adopted under this section a road in which the county has previously acquired a public interest by purchase, condemnation, dedication, or a court's final judgment of adverse possession does not affect the status of the omitted road.

(i) In this section, "continuous maintenance" means grading or other routine road maintenance beginning before September 1, 1981, and continuing until the date of protest.

Sec. 258.003. CONCLUSIVE EVIDENCE. Except as provided by Section 258.004, a county road map adopted under Section 258.002 is conclusive evidence of:

(1) the public's right of access over a road included on the map; and
(2) the county's authority to spend public money to maintain a road included on the map.

Sec. 258.004. CONTEST. (a) A person asserting a private right, title, or interest in a road in which a public interest is asserted under this chapter may contest the inclusion of the road in the county road map by filing a suit in a district court in the county in which the road is located not later than the second anniversary of the date on which the county road map including the road was adopted.

(b) The county has the burden of proving that the county has continuously maintained, as that term is defined by Section 258.002, the road in question.

Sec. 258.005. TRANSFER OF INTEREST. (a) The commissioners court shall include a notice of its intention to consider adoption of the county road map with the ad valorem tax statements for the year before the adoption of a county road map under Section 258.002. If a property owner tenders a warranty deed to the county for property included in the right-of-way of a county road, the commissioners court shall accept and file the warranty deed.

(b) The commissioners court shall include a notice of the adoption of the county road map with the ad valorem tax statements for the year after the year in which the county adopts a map under Section 258.002. The notice must include a list of all roads in which the county has claimed a public interest by adoption of the map, the date of the adoption, and the date on which the statute of limitations will bar a landowner from filing a suit in district court to dispute the county's claim.

Sec. 258.006. TAX ABATEMENT; REVERSION OF INTEREST. (a) A private right, title, or interest, other than a mineral interest, held by a person in land underlying a road in which the county has acquired a public interest under this chapter is exempt from ad valorem taxation by any taxing authority.

(b) A right, title, or interest described in Subsection (a) reverts completely to the person who held the right, title, or interest at the time the county acquired the public interest in the land if the county ceases to maintain the road, and the person is liable for all ad valorem taxes levied on that right, title, or interest on or after the reversion.

(c) To levy and collect an ad valorem tax on a right, title, or interest described in Subsection (a) that has reverted to the landowner under Subsection (b), the taxing authority must obtain from the county an order stating that the county has ceased to maintain the road. The owner of the right, title, or interest will be liable for any ad valorem tax levied on the right, title, or interest on or after the date of the county's order.

The amendment was read.

Senator Shapiro 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 896** 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 Shapiro, Chair; Madla, Cain, Staples, and Brown.

SENATE BILL 1637 WITH HOUSE AMENDMENT

Senator Bernsen called **SB 1637** 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 1637** in SECTION 1 of the bill by striking added Subdivision (18), Subsection (b), Section 17.46, Business & Commerce Code (Senate Engrossment Printing page 3, lines 7-18), and substituting the following:

(18) advertising, selling, or distributing a card which purports to be a prescription drug identification card issued under Section 19A, Article 21.07-6, Insurance Code, in accordance with rules adopted by the commissioner of insurance, which offers a discount on the purchase of health care goods or services from a third party provider, and which is not evidence of insurance coverage, unless:

(A) the discount is authorized under an agreement between the seller of the card and the provider of those goods and services or the discount or card is offered to members of the seller;

(B) the seller does not represent that the card provides insurance coverage of any kind; and

(C) the discount is not false, misleading, or deceptive;

The amendment was read.

On motion of Senator Bernsen, the Senate concurred in the House amendment to **SB 1637** by a viva voce vote.

SENATE BILL 609 WITH HOUSE AMENDMENT

Senator Bernsen called **SB 609** 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 609** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

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

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

SECTION 1. Section 662.005, Government Code, is amended by adding a new Subsection (b) and relettering the existing Subsection (b) as Subsection (c) to read as follows:

(b) Except as provided by Section 662.010, and notwithstanding Section 659.015 or another law, a state employee who is a peace officer commissioned by the Department of Public Safety and who is required to work on a national or state holiday that falls on a Saturday or Sunday is entitled to compensatory time off at the rate of one hour for each hour worked on the holiday.

(c) [(b)] In this section, "state employee":

(1) includes an individual who uses paid leave from a state agency; and

(2) does not include an individual who uses unpaid leave from a state agency.

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

The amendment was read.

On motion of Senator Bernsen, the Senate concurred in the House amendment to **SB 609** by a viva voce vote.

SENATE BILL 215 WITH HOUSE AMENDMENT

Senator Bernsen called **SB 215** 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 215** by inserting the following SECTION, appropriately numbered, and renumbering subsequent SECTION of the bill accordingly:

SECTION _____. Chapter 18, Code of Criminal Procedure, is amended by adding Article 18.22 to read as follows:

Art. 18.22. TESTING FOR COMMUNICABLE DISEASES FOLLOWING CERTAIN ARRESTS. (a) A person who is arrested for an offense under Section 38.04, Penal Code, and who during the commission of that offense committed an assault on a peace officer by biting the officer or otherwise causing the officer to come in to contact with the person's bodily fluids shall, at the direction of the court having jurisdiction over the arrested person, undergo a medical procedure or test designed to show or help show whether the person has a communicable disease. The court may direct the person to undergo the procedure or test on its own motion or on the request of the peace officer. If the person refuses to submit voluntarily to the procedure or test, the court shall require the person to submit to the procedure or test. Notwithstanding any other law, the person performing the procedure or test shall make the test results available to the local health authority, and the local health authority shall notify the peace officer of the test result. The state may not use the fact that a medical procedure or test was performed on a person under this article or use the results of the procedure or test in any criminal proceeding arising out of the alleged offense.

(b) Testing under this article shall be conducted in accordance with written infectious disease control protocols adopted by the Texas Board of Health that clearly establish procedural guidelines that provide criteria for testing and that respect the rights of the arrested person and the peace officer.

(c) Nothing in this article authorizes a court to release a test result to a person other than a person specifically authorized by this article, and Section 81.103(d), Health and Safety Code, does not authorize that disclosure.

The amendment was read.

On motion of Senator Bernsen, the Senate concurred in the House amendment to **SB 215** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 152

Senator Ogden 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 152** 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 152** 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 Ogden, Chair; Bivins, Truan, West, and Wentworth.

CONFERENCE COMMITTEE ON HOUSE BILL 2005

Senator Wentworth 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 2005** 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 2005** 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 Wentworth, Chair; Brown, Barrientos, Lucio, and Nelson.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 303 ADOPTED

Senator Lucio called from the President's table the Conference Committee Report on **SB 303**. The Conference Committee Report was read and was filed with the Senate on Wednesday, May 23, 2001.

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1641 ADOPTED

Senator Barrientos called from the President's table the Conference Committee Report on **HB 1641**. The Conference Committee Report was filed with the Senate on Wednesday, May 23, 2001.

On motion of Senator Barrientos, the Conference Committee Report was adopted by the following vote: Yeas 29, Nays 1, Present-not voting 1.

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

Nays: Ogden.

Present-not voting: Mr. President.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 113 ADOPTED

Senator Moncrief called from the President's table the Conference Committee Report on **SB 113**. The Conference Committee Report was filed with the Senate on Wednesday, May 23, 2001.

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

SENATE JOINT RESOLUTION 6 WITH HOUSE AMENDMENT

Senator Duncan called **SJR 6** 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.

Committee Amendment No. 1

Amend **SJR 6** by striking Subsection (c) and inserting the following:

(c) A property owner who is eligible to receive the exemption authorized by Section 1-j of this article may apply for the exemption authorized by the legislature under this section in the manner provided by general law, subject to the provisions of Subsection (d). A property owner who receives the exemption authorized by the legislature under this section is not entitled to receive the exemption authorized by Section 1-j of this article for the same property;

The amendment was read.

Senator Duncan moved to concur in the House amendment to **SJR 6**.

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

Present-not voting: Mr. President.

SENATE BILL 51 WITH HOUSE AMENDMENTS

Senator Zaffirini called **SB 51** 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 51** in SECTION 1 of the bill, proposed Section 32.0247, Human Resources Code, by striking Subsection (c).

Floor Amendment No. 1 on Third Reading

Amend **SB 51** on third reading, by adding new subsections (c), (d), (e), and (f), as follows:

(c) The department shall by rule establish a specific set of income, assets or resources allowable for recipients under this section. The income level shall not be less than 200% or more than 400% of the federal poverty level. Allowable asset or resource levels shall not be less than:

(1) the levels allowed for individuals who are in foster care; and

(2) the levels allowed for a person under 19 years of age who is eligible for the medical assistance program.

(d) In setting allowable income, asset or resource levels, the department shall exclude:

(1) any financial benefit used for the purpose of educational or vocational training, such as scholarships, student loans or grants; and

(2) any financial benefit use for the purpose of housing; and

(3) any grants or subsidies obtained as a result of the Foster Care Independence Act.

(e) The Texas Department of Protective and Regulatory Services shall certify the income, assets or resources of each individual on the date the individual exits substitute care. An individual qualifying for medical assistance as established by this section shall remain eligible for twelve calendar months after certification and after each recertification.

(f) The recertification process for individuals who are eligible for medical assistance under this section shall include the option of recertifying by mail or phone.

The amendments were read.

On motion of Senator Zaffirini, the Senate concurred in the House amendments to **SB 51** by a viva voce vote.

SENATE BILL 11 WITH HOUSE AMENDMENTS

Senator Nelson called **SB 11** 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 11** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to protecting the privacy of medical records; providing penalties.

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

SECTION 1. Title 2, Health and Safety Code, is amended by adding Subtitle I to read as follows:

SUBTITLE I. MEDICAL RECORDS CHAPTER 181. MEDICAL RECORDS PRIVACY SUBCHAPTER A. GENERAL PROVISIONS

Sec. 181.001. DEFINITIONS. (a) Unless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) In this chapter:

(1) "Covered entity" means any person, other than an employer, who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site;

(B) comes into possession of protected health information;

(C) obtains or stores protected health information under this chapter; or

(D) is an employee, agent, or contractor of a person described by Paragraph (A), (B), or (C) insofar as the employee, agent, or contractor creates, receives, obtains, maintains, uses, or transmits protected health information.

(2) "Health Insurance Portability and Accountability Act and Privacy Standards" means the privacy requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and the final rules adopted on December 28, 2000, and published at 65 Fed. Reg. 82798 et seq., and any subsequent amendments.

(3) "Marketing" means the promotion or advertisement, by a covered entity, of specific products or services if the covered entity receives, directly or indirectly, a financial incentive or remuneration from a third party for the use, access, or disclosure of protected health information. Marketing does not include a communication, for treatment or health care operations, by a health care provider, health plan, or participants in an organized health care arrangement or their affiliated covered entities or business associates within the meaning of those terms under the Health Insurance Portability and Accountability Act and Privacy Standards.

Sec. 181.002. APPLICABILITY. This chapter does not affect the validity of another statute of this state that provides greater confidentiality for information made confidential by this chapter.

Sec. 181.003. SOVEREIGN IMMUNITY. This chapter does not waive sovereign immunity to suit or liability.

Sec. 181.004. RULES. A state agency that licenses or regulates a covered entity may adopt rules as necessary to carry out the purposes of this chapter.

[Sections 181.005-181.050 reserved for expansion]

SUBCHAPTER B. EXEMPTIONS

Sec. 181.051. PARTIAL EXEMPTION. Except for Section 181.152, this chapter does not apply to:

(1) a covered entity as defined in the Health Insurance Portability and Accountability Act and Privacy Standards, an affiliate under the covered entity's common ownership or control, or an entity participating in an organized health care arrangement with the covered entity;

(2) a business associate of a covered entity if the business associate is acting in compliance with the Health Insurance Portability and Accountability Act and Privacy Standards;

(3) a licensee as defined in Article 28B.01, Insurance Code; or

(4) an entity established under Article 5.76-3, Insurance Code.

Sec. 181.052. PROCESSING PAYMENT TRANSACTIONS BY FINANCIAL INSTITUTIONS. (a) In this section, "financial institution" has the meaning assigned by Section 1101, Right to Financial Privacy Act of 1978 (12 U.S.C. Section 3401), and its subsequent amendments.

(b) To the extent that a covered entity engages in activities of a financial institution, or authorizes, processes, clears, settles, bills, transfers, reconciles, or collects payments for a financial institution, this chapter and any rule adopted under this chapter does not apply to the covered entity with respect to those activities, including the following:

(1) using or disclosing information to authorize, process, clear, settle, bill, transfer, reconcile, or collect a payment for, or related to, health plan premiums or

health care, if the payment is made by any means, including a credit, debit, or other payment card, an account, a check, or an electronic funds transfer; and

(2) requesting, using, or disclosing information with respect to a payment described by Subdivision (1):

(A) for transferring receivables;

(B) for auditing;

(C) in connection with a customer dispute or an inquiry from or to a customer;

(D) in a communication to a customer of the entity regarding the customer's transactions, payment card, account, check, or electronic funds transfer;

(E) for reporting to consumer reporting agencies; or

(F) for complying with a civil or criminal subpoena or a federal or state law regulating the covered entity.

Sec. 181.053. NONPROFIT AGENCIES. The department shall by rule exempt from this chapter a nonprofit agency that pays for health care services or prescription drugs for an indigent person only if the agency's primary business is not the provision of health care or reimbursement for health care services.

Sec. 181.054. WORKERS' COMPENSATION. This chapter does not apply to:

(1) workers' compensation insurance or a function authorized by Title 5, Labor Code; or

(2) any person or entity in connection with providing, administering, supporting, or coordinating any of the benefits under a self-insured program for workers' compensation.

Sec. 181.055. EMPLOYEE BENEFIT PLAN. This chapter does not apply to:

(1) an employee benefit plan; or

(2) any covered entity, health care entity, or other person, insofar as the entity or person is acting in connection with an employee benefit plan.

Sec. 181.056. AMERICAN RED CROSS. This chapter does not prohibit the American Red Cross from accessing any information necessary to perform its duties to provide disaster relief, disaster communication, or emergency leave verification services for military personnel.

Sec. 181.057. INFORMATION RELATING TO OFFENDERS WITH MENTAL IMPAIRMENTS. This chapter does not apply to an agency described by Section 614.017 with respect to the disclosure, receipt, transfer, or exchange of medical and health information and records relating to individuals in the custody of an agency or in community supervision.

Sec. 181.058. EDUCATIONAL RECORDS. In this chapter, protected health information does not include:

(1) education records covered by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) and its subsequent amendments; or

(2) records described by 20 U.S.C. Section 1232g(a)(4)(B)(iv) and its subsequent amendments.

[Sections 181.059-181.100 reserved for expansion]

SUBCHAPTER C. ACCESS TO AND USE OF
HEALTH CARE INFORMATION

Sec. 181.101. COMPLIANCE WITH FEDERAL REGULATIONS. (a) A covered entity shall comply with the Health Insurance Portability and Accountability Act and Privacy Standards relating to:

- (1) an individual's access to the individual's protected health information;
- (2) amendment of protected health information;
- (3) uses and disclosures of protected health information, including requirements relating to consent; and
- (4) notice of privacy practices for protected health information.

(b) To the extent that this chapter differs from the Health Insurance Portability and Accountability Act and Privacy Standards, this chapter controls if the provisions of this chapter are clearly more restrictive than the provisions of the Health Insurance Portability and Accountability Act and Privacy Standards.

Sec. 181.102. INFORMATION FOR RESEARCH. (a) A covered entity or health care entity may disclose protected health information to a person performing health research, regardless of the source of funding of the research, for the purpose of conducting health research, only if the person performing health research has obtained:

(1) individual consent or authorization for use or disclosure of protected health information for research required by federal law;

(2) the express written authorization of the individual required by this chapter;

(3) documentation that a waiver of individual consent or authorization required for use or disclosure of protected health information has been granted by an institutional review board or privacy board as required under federal law; or

(4) documentation that a waiver of the individual's express written authorization required by this chapter has been granted by a privacy board established under this section.

(b) A privacy board:

(1) must consist of members with varying backgrounds and appropriate professional competency as necessary to review the effect of the research protocol for the project or projects on the privacy rights and related interests of the individuals whose protected health information would be used or disclosed;

(2) must include at least one member who is not affiliated with the covered entity or health care entity or an entity conducting or sponsoring the research, and not related to any person who is affiliated with an entity described by this subsection; and

(3) may not have any member participating in the review of any project in which the member has a conflict of interest.

(c) A privacy board may grant a waiver of the express written authorization for the use of protected health information if the privacy board obtains the following documentation:

(1) a statement identifying the privacy board and the date on which the waiver of the express written authorization was approved by the privacy board;

(2) a statement that the privacy board has determined that the waiver satisfies the following criteria:

(A) the use or disclosure of protected health information involves no more than minimal risk to the affected individuals;

(B) the waiver will not adversely affect the privacy rights and welfare of those individuals;

(C) the research could not practicably be conducted without the waiver;

(D) the research could not practicably be conducted without access to and use of the protected health information;

(E) the privacy risks to individuals whose protected health information is to be used or disclosed are reasonable in relation to the anticipated benefits, if any, to the individuals and the importance of the knowledge that may reasonably be expected to result from the research;

(F) there is an adequate plan to protect the identifiers from improper use and disclosure;

(G) there is an adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers or the retention is otherwise required by law; and

(H) there are adequate written assurances that the protected health information will not be reused or disclosed to another person or entity, except:

(i) as required by law;

(ii) for authorized oversight of the research project; or

(iii) for other research for which the use or disclosure of protected health information would be permitted by state or federal law;

(3) a brief description of the protected health information for which use or access has been determined to be necessary by the privacy board under Subdivision (2)(D); and

(4) a statement that the waiver of express written authorization has been approved by the privacy board following the procedures under Subsection (e).

(d) A waiver must be signed by the presiding officer of the privacy board or the presiding officer's designee.

(e) The privacy board must review the proposed research at a convened meeting at which a majority of the privacy board members are present, including at least one member who satisfies the requirements of Subsection (b)(2). The waiver of express written authorization must be approved by the majority of the privacy board members present at the meeting, unless the privacy board elects to use an expedited review procedure. The privacy board may use an expedited review procedure only if the research involves no more than minimal risk to the privacy of the individual who is the subject of the protected health information of which use or disclosure is being sought. If the privacy board elects to use an expedited review procedure, the review and approval of the waiver of express written authorization may be made by the presiding officer of the privacy board or by one or more members of the privacy board as designated by the presiding officer.

(f) A covered entity or health care entity may disclose protected health information to a person performing health research if the covered entity or health care entity obtains from the person performing the health research representations that:

(1) use or disclosure is sought solely to review protected health information as necessary to prepare a research protocol or for similar purposes preparatory to research;

(2) no protected health information is to be removed from the covered entity or health care entity by the person performing the health research in the course of the review; and

(3) the protected health information for which use or access is sought is necessary for the research purposes.

(g) A person who is the subject of protected health information collected or created in the course of a clinical research trial may access the information at the conclusion of the research trial.

Sec. 181.103. DISCLOSURE OF INFORMATION TO PUBLIC HEALTH AUTHORITY. A covered entity may use or disclose protected health information without the express written authorization of the individual for public health activities or to comply with the requirements of any federal or state health benefit program or any federal or state law. A covered entity may disclose protected health information:

(1) to a public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public interventions;

(2) to a public health authority or other appropriate government authority authorized by law to receive reports of child or adult abuse, neglect, or exploitation; and

(3) to any state agency in conjunction with a federal or state health benefit program.

[Sections 181.104-181.150 reserved for expansion]

SUBCHAPTER D. PROHIBITED ACTS

Sec. 181.151. REIDENTIFIED INFORMATION. A person may not reidentify or attempt to reidentify an individual who is the subject of any protected health information without obtaining the individual's consent or authorization if required under this chapter or other state or federal law.

Sec. 181.152. MARKETING USES OF INFORMATION. (a) A covered entity may not disclose, use, or sell or coerce an individual to consent to the disclosure, use, or sale of protected health information, including prescription patterns, for marketing purposes without the consent or authorization of the individual who is the subject of the protected health information.

(b) A written marketing communication must be sent in an envelope showing only the addresses of sender and recipient and must:

(1) state the name and toll-free number of the health care entity sending the marketing communication; and

(2) explain the recipient's right to have the recipient's name removed from the sender's mailing list.

(c) A person who receives a request under Subsection (b)(2) to remove a person's name from a mailing list shall remove the person's name not later than the fifth day after the date the person receives the request.

[Sections 181.153-181.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

Sec. 181.201. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The attorney general may institute an action for injunctive relief to restrain a violation of this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the attorney general may institute an action for civil penalties against a covered entity or health care entity for a violation of this chapter. A civil penalty assessed under this section may not exceed \$3,000 for each violation.

(c) If the court in which an action under Subsection (b) is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed \$250,000.

Sec. 181.202. DISCIPLINARY ACTION. In addition to the penalties prescribed by this chapter, a violation of this chapter by an individual or facility that is licensed by an agency of this state is subject to investigation and disciplinary proceedings, including probation or suspension by the licensing agency. If there is evidence that the violations of this chapter constitute a pattern or practice, the agency may revoke the individual's or facility's license.

Sec. 181.203. EXCLUSION FROM STATE PROGRAMS. In addition to the penalties prescribed by this chapter, a covered entity shall be excluded from participating in any state-funded health care program if there is evidence that the covered entity engaged in a pattern or practice of violating this chapter.

Sec. 181.204. AVAILABILITY OF OTHER REMEDIES. This chapter does not affect any right of a person under other law to bring a cause of action or otherwise seek relief with respect to conduct that is a violation of this chapter.

SECTION 2. Title 1, Insurance Code, is amended by adding Chapter 28B to read as follows:

CHAPTER 28B. PRIVACY OF HEALTH INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Art. 28B.01. DEFINITIONS. In this chapter:

(1) "Health information" means any information or data regarding an individual, other than age or gender, whether oral or recorded in any form or medium, that is created by or derived from a health care provider or the individual and that relates to:

(A) the past, present, or future physical, mental, or behavioral health or condition of an individual;

(B) the provision of health care to an individual; or

(C) payment for the provision of health care to an individual.

(2) "Licensee" means a person who holds or is required to hold a license, registration, certificate of authority, or other authority under this code or another insurance law of this state. The term includes an insurance company, group hospital service corporation, mutual insurance company, local mutual aid association, statewide mutual assessment company, stipulated premium insurance company, health maintenance organization, reciprocal or interinsurance exchange, Lloyd's plan, fraternal benefit society, county mutual insurer, farm mutual insurer, or insurance agent.

(3) "Nonpublic personal health information" means health information:

(A) that identifies an individual who is the subject of the information; or

(B) with respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

Art. 28B.02. PERSONALLY IDENTIFIABLE HEALTH INFORMATION: PRIVACY NOTICE AND DISCLOSURE AUTHORIZATION. (a) A licensee must obtain an authorization to disclose any nonpublic personal health information before making such a disclosure.

(b) The request for authorization required by this article may be in written or electronic form and must:

(1) state the identity of the consumer or customer who is the subject of the nonpublic personal health information;

- (2) describe:
 - (A) the types of nonpublic personal health information to be disclosed;
 - (B) the parties to whom the licensee discloses nonpublic personal health information;
 - (C) the purpose of the disclosure;
 - (D) how the information will be used; and
 - (E) the procedure for revoking the authorization;
- (3) include the signature and date signed of:
 - (A) the consumer or customer who is the subject of the nonpublic personal health information; or
 - (B) the individual who is legally empowered to grant authority;
- (4) provide notice:
 - (A) of the length of time for which the authorization is valid; and
 - (B) that the consumer or customer may revoke the authorization at any time; and
- (5) specify the amount of time that the authorization remains valid, which may not exceed 24 months.

(c) The right of a consumer or customer to revoke an authorization at any time is subject to the rights of an individual who acted in reliance on the authorization before receiving notice of a revocation.

(d) The licensee shall retain the original or a copy of the authorization in the record of the individual who is the subject of the nonpublic personal health information.

Art. 28B.03. DELIVERY OF AUTHORIZATION. (a) A request for authorization and an authorization form may be delivered to a consumer or a customer if the request and the authorization form are clear and conspicuous.

(b) A licensee must include delivery of the authorization in a notice to the consumer or customer only if the licensee intends to disclose protected health information under this chapter.

Art. 28B.04. EXCEPTIONS. A licensee may disclose nonpublic personal health information to the extent that the disclosure is necessary to perform the following insurance functions on behalf of that licensee:

- (1) the investigation or reporting of actual or potential fraud, misrepresentation, or criminal activity;
- (2) underwriting;
- (3) the placement or issuance of an insurance policy;
- (4) loss control services;
- (5) ratemaking and guaranty fund functions;
- (6) reinsurance and excess loss insurance;
- (7) risk management;
- (8) case management;
- (9) disease management;
- (10) quality assurance;
- (11) quality improvement;
- (12) performance evaluation;
- (13) health care provider credentialing verification;
- (14) utilization review;
- (15) peer review activities;

- (16) actuarial, scientific, medical, or public policy research;
- (17) grievance procedures;
- (18) the internal administration of compliance, managerial, and information systems;
- (19) policyholder services;
- (20) auditing;
- (21) reporting;
- (22) database security;
- (23) the administration of consumer disputes and inquiries;
- (24) external accreditation standards;
- (25) the replacement of a group benefit plan or workers' compensation policy or program;
- (26) activities in connection with a sale, merger, transfer, or exchange of all or part of a business or operating unit;
- (27) any activity that permits disclosure without authorization under the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.), as amended;
- (28) disclosure that is required, or is a lawful or appropriate method to enforce the licensee's rights or the rights of other persons engaged, in carrying out a transaction or providing a product or service that the consumer requests or authorizes;
- (29) claims administration, adjustment, and management;
- (30) any activity otherwise permitted by law, required pursuant to a governmental reporting authority, or required to comply with legal process; and
- (31) any other insurance functions that the commissioner approves that are:
 - (A) necessary for appropriate performance of insurance functions; and
 - (B) fair and reasonable to the interests of consumers.

Art. 28B.05. EXCEPTION FOR COMPLIANCE WITH FEDERAL RULES. This subchapter does not apply to a licensee who is required to comply with the standards governing the privacy of individually identifiable health information adopted by the United States Secretary of Health and Human Services under Section 262(a), Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sections 1320d-1320d-8).

Art. 28B.06. PROTECTION OF FAIR CREDIT REPORTING ACTS. (a) This chapter may not be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) and an inference may not be drawn based on this chapter regarding whether information is transaction or experience information under Section 603 of that Act (15 U.S.C. Section 1681a).

(b) This chapter does not preempt or supersede a state law related to medical record, health, or insurance information privacy that is in effect on July 1, 2002.

Art. 28B.07. VIOLATION; PENALTIES. (a) A licensee may not knowingly or wilfully violate this chapter.

(b) The department may investigate any alleged violation of this chapter and may impose fines and other sanctions as determined to be appropriate in accordance with Chapters 82 and 84 of this code and the other insurance laws of this state.

Art. 28B.08. RULES. The commissioner may adopt rules as necessary to implement this chapter.

SECTION 3. (a) Chapter 181, Health and Safety Code, as added by this Act, takes effect September 1, 2001. A covered entity shall comply with the requirements of

Chapter 181, Health and Safety Code, as added by this Act, not later than September 1, 2003.

(b) Chapter 28B, Insurance Code, as added by this Act, takes effect January 1, 2002.

(c) The commissioner of insurance may delay the date for compliance with Chapter 28B, Insurance Code, as added by this Act, if the commissioner determines that an entity needs more time to establish policies and systems to comply with the requirements of that chapter.

(d) An authorization or consent granting access to an individual's health care records executed before the effective date of this Act is governed by the law in effect when the authorization or consent was executed, and the former law continues in effect for that purpose.

Floor Amendment No. 1

Amend **CSSB 11** as follows:

(1) In SECTION 1 of the bill, in added Section 181.001, Health and Safety Code (House committee printing, page 2, between lines 26 and 27), add the following new subdivision:

(4) "Protected health information" means individually identifiable health information, including demographic information collected from an individual, that:

(A) relates to:

(i) the past, present, or future physical or mental health or condition of an individual;

(ii) the provision of health care to an individual; or

(iii) the past, present, or future payment for the provision of health care to an individual; and

(B) identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(2) In SECTION 1 of the bill, in added Section 181.051, Health and Safety Code (House committee printing, page 3, line 18), strike "acting in compliance" and substitute "required to comply".

(3) In SECTION 1 of the bill, in added Section 181.055(2), Health and Safety Code (House committee printing, page 5, line 15), strike "health care entity".

(4) In SECTION 1 of the bill, in added Section 181.101(a), Health and Safety Code (House committee printing, page 6, line 11), strike "a".

(5) In SECTION 1 of the bill, strike added Section 181.101(b), Health and Safety Code (House committee printing, page 6, lines 21-25).

(6) In SECTION 1 of the bill, in added Section 181.102(a), Health and Safety Code (House committee printing, page 6, line 27), strike "or health care entity".

(7) In SECTION 1 of the bill, in added Section 181.102(b), Health and Safety Code (House committee printing, page 7, line 24), strike "or health care entity".

(8) In SECTION 1 of the bill, in added Section 181.102(f), Health and Safety Code (House committee printing, page 10, line 12), strike "or health care entity".

(9) In SECTION 1 of the bill, in added Section 181.102(f), Health and Safety Code (House committee printing, page 10, line 14), strike "or health care entity".

(10) In SECTION 1 of the bill, in added Section 181.102(f)(2), Health and Safety Code (House committee printing, page 10, line 20), strike "or health care entity".

(11) In SECTION 1 of the bill, in added Section 181.201(b), Health and Safety Code (House committee printing, page 12, line 23), strike "or health care entity".

(12) In SECTION 1 of the bill, in added Section 181.203, Health and Safety Code (House committee printing, page 13, line 14), strike "there is evidence that" and substitute "a court finds".

Floor Amendment No. 2

Amend **CSSB 11** as follows:

(1) In SECTION 1 of the bill, in added Section 181.001(b)(1), Health and Safety Code (House committee printing, page 1, line 15), strike "person, other than an employer," and substitute "person".

(2) In SECTION 1 of the bill, in added Section 181.051, Health and Safety Code (House committee printing, page 3, line 21), strike "or".

(3) In SECTION 1 of the bill, in added Section 181.051, Health and Safety Code (House committee printing, page 3, line 23), between Code" and the period insert the following:

"; or

(5) an employer"

Floor Amendment No. 3

Amend **CSSB 11**, in SECTION 1 of the bill, by striking added Section 181.001(b)(3), Health and Safety Code (House committee printing, page 2, lines 16-26), and substituting the following:

(3) "Marketing" means the promotion or advertisement, by a covered entity, of specific products or services if the covered entity receives, directly or indirectly, a financial incentive or remuneration from a third party for the use, access, or disclosure of protected health information. Marketing does not include:

(A) a communication, for treatment or health care operations, by a health care provider, health plan, or participants in an organized health care arrangement or their affiliated covered entities or business associates within the meaning of those terms under the Health Insurance Portability and Accountability Act and Privacy Standards; or

(B) a communication that complies with the Health Insurance Portability and Accountability Act and Privacy Standards and informs the public of endowment and development activities by a tax-exempt, nonprofit charitable hospital or foundation, or that requests contributions for a nonprofit charitable hospital or foundation.

Floor Amendment No. 4

Amend Floor Amendment No. 3 to **CSSB 11**, in added Section 181.001(b)(3), Health and Safety Code, by striking "from a third party" (page 1, line 8, Delisi floor amendment).

Floor Amendment No. 5

Amend **CSSB 11** as follows:

(1) In SECTION 1 of the bill, in added Section 181.002, Health and Safety Code (House committee printing, page 2, line 27), between the period and "This" insert "(a)".

(2) In SECTION 1 of the bill, in added Section 181.002, Health and Safety Code (House committee printing, page 3, between lines 2 and 3), insert the following subsection:

(b) To the extent that this chapter conflicts with another law with respect to protected health information collected by a governmental body or unit, this chapter controls.

Floor Amendment No. 6

Amend **CSSB 11**, in SECTION 1 of the bill, in added Section 181.051, Health and Safety Code (House committee printing, page 3, lines 10-11), by striking "Section 181.152" and substituting "Subchapter D".

Floor Amendment No. 7

Amend **CSSB 11** as follows:

(1) In SECTION 2 of the bill, in added Article 28B.07, Insurance Code (House committee printing, page 19, line 7), strike "(a)".

(2) In SECTION 2 of the bill, strike added Article 28B.07(b), Insurance Code (House committee printing, page 19, lines 9-12).

(3) In SECTION 2 of the bill, in added Chapter 28B, Insurance Code (House committee printing, page 19, between lines 14 and 15), insert the following Articles:

Art. 28B.09. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The attorney general may institute an action for injunctive relief to restrain a violation of this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the attorney general may institute an action for civil penalties against a covered entity or health care entity for a violation of this chapter. A civil penalty assessed under this section may not be less than \$3,000 for each violation.

(c) If the court in which an action under Subsection (b) is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed \$250,000.

(b) The civil penalty authorized by this article is in addition to any other civil, administrative, or criminal action provided by law.

Art. 28B.10. DISCIPLINARY ACTION. In addition to the penalties prescribed by this chapter, a violation of this chapter by a licensee is subject to investigation and disciplinary proceedings, including probation or suspension. Evidence of a pattern or practice of violations under this chapter may subject the licensee to license revocation.

Art. 28B.11. EXCLUSION FROM STATE PROGRAMS. In addition to the penalties prescribed by this chapter, a licensee shall be excluded from participating in any state-funded health care program if there is evidence that the licensee engaged in a pattern or practice of violating this chapter.

Art. 28B.12. AVAILABILITY OF OTHER REMEDIES. This chapter does not affect any right of a person under other law to bring a cause of action or otherwise seek relief with respect to conduct that is a violation of this chapter.

Floor Amendment No. 8

Amend **CSSB 11** by adding the following appropriately numbered SECTIONS of the bill and renumbering the remaining SECTIONS of the bill as appropriate:

SECTION _____. Section 161.032, Health and Safety Code, is amended to read as follows:

Sec. 161.032. RECORDS AND PROCEEDINGS CONFIDENTIAL. (a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.

(b) Notwithstanding Section 551.002, Government Code, the following proceedings may be held in a closed meeting following the procedures prescribed by Subchapter E, Chapter 551, Government Code:

(1) a [A] proceeding of a medical peer review committee, as defined by Section 151.002, Occupations Code [1.03, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes)], or medical committee;[-] or

(2) a meeting of the governing body of a public hospital, hospital district, [or] hospital authority, or health maintenance organization of a public hospital, hospital authority, hospital district, or state-owned teaching hospital at which the governing body receives records, information, or reports provided by a medical committee, [or] medical peer review committee, or compliance officer [is not subject to Chapter 551, Government Code].

(c) Records, information, or reports of a medical committee, [or] medical peer review committee, or compliance officer and records, information, or reports provided by a medical committee, [or] medical peer review committee, or compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under Chapter 552, Government Code.

(d) [(b)] The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.

(e) The records, information, and reports received or maintained by a compliance officer retain the protection provided by this section only if the records, information, or reports are received, created, or maintained in the exercise of a proper function of the compliance officer as provided by the Office of Inspector General of the United States Department of Health and Human Services.

(f) [(e)] This section and Subchapter A, Chapter 160, Occupations Code [Section 5.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes)], do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, hospital district, hospital authority, or extended care facility.

SECTION _____. The heading to Subchapter D, Chapter 161, Health and Safety Code, is amended to read as follows:

SUBCHAPTER D. MEDICAL COMMITTEES, [AND] MEDICAL
PEER REVIEW COMMITTEES, AND COMPLIANCE OFFICERS

The amendments were read.

Senator Nelson 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 11** 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 Nelson, Chair; Zaffirini, Harris, Sibley, and Carona.

SENATE BILL 1747 WITH HOUSE AMENDMENT

Senator Haywood called **SB 1747** 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 1747** on page 5, line 5, after the word "who" and before the word "obtains" by adding "is subject to Section 409 of the Packers and Stockyards Act (7 U.S.C. Section 181 et seq) that"

The amendment was read.

On motion of Senator Haywood, the Senate concurred in the House amendment to **SB 1747** by a viva voce vote.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 25, 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 1886 (139 Ayes, 0 Nays, 2 Present Not Voting)

HB 2498 (viva-voce vote)

HB 2510 (140 Ayes, 0 Nays, 2 Present Not Voting)

HB 2522 (138 Ayes, 0 Nays, 4 Present Not Voting)

HB 2531 (viva-voce vote)

HB 2544 (viva-voce vote)

HB 2557 (viva-voce vote)

HB 2571 (131 Ayes, 0 Nays, 2 Present Not Voting)

HB 2575 (125 Ayes, 10 Nays, 2 Present Not Voting)

HB 2600 (134 Ayes, 8 Nays, 2 Present Not Voting)

HB 2601 (viva-voce vote)

HB 2602 (135 Ayes, 0 Nays, 2 Present Not Voting)

HB 2676 (viva-voce vote)

HB 2691 (viva-voce vote)

HB 2700 (139 Ayes, 0 Nays, 2 Present Not Voting)

HB 2729 (viva-voce vote)

HB 2766 (viva-voce vote)

HB 2778 (viva-voce vote)

HB 2787 (viva-voce vote)

HB 2794 (viva-voce vote)

HB 2804 (viva-voce vote)

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

HB 1317

House Conferees: Farabee - Chair/Driver/Hawley/Lewis, Ron/Merritt

HB 2509

House Conferees: Danburg - Chair/Gallego/Madden/Maxey/Sadler

HB 2585

House Conferees: Chavez - Chair/Keel/Lewis, Glenn/Turner, Bob/Villarreal, Mike

THE HOUSE HAS DISCHARGED ITS CONFEREES AND APPOINTED NEW CONFEREES ON THE FOLLOWING MEASURES:

SB 732

House Conferees: Farabee - Chair/Chisum/Hilderbran/Homer/Ramsay

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

SENATE RESOLUTION 1186

Senator West offered the following resolution:

WHEREAS, The growth rate in Texas over the last decade was nearly double that of the nation as a whole, and much of this growth occurred in traditionally low-income areas such as inner-city areas and the border region; and

WHEREAS, While public colleges and universities granting four-year degrees are becoming increasingly more accessible to students from low-income backgrounds, there has not been a commensurate increase in the enrollment of these students in graduate or professional degree programs such as law schools; and

WHEREAS, Students from low-income backgrounds are often lacking the information and resources that may be more readily available to other students when making education and career choices, thereby compounding the difficulty of overcoming their socioeconomic disadvantages; and

WHEREAS, The long-term consequences of this disadvantage are evident in the direct correlation between a population's level of education and its economic well-being; and

WHEREAS, An individual with a professional or graduate degree is estimated to earn \$2 million more over a lifetime than a person with only a high school degree and \$1 million more than a person with only a bachelor's degree; and

WHEREAS, Cultivating a well-educated workforce now is imperative to securing future economic prosperity, and the equal opportunity of all Texans to earn a graduate or professional degree is of paramount importance to both the individual earning the degree and to the state as a whole; and

WHEREAS, Law schools should work to provide services to support and encourage highly qualified, economically disadvantaged students interested in pursuing a legal education, to provide financial support, including stipends and scholarships, and to offer summer programs to prepare economically disadvantaged students for a legal education; now, therefore, be it

RESOLVED, That the Senate of the 77th Texas Legislature hereby direct the deans of the public law schools in Texas, including Texas Southern University, Texas Tech University, the University of Houston, and The University of Texas at Austin, to give further study to these issues, propose plans for summer educational institutes and other effective programs for increasing representation of economically disadvantaged students in Texas public law schools, and report the results of their work to the chair of the Texas Senate Education Committee no later than December 31, 2002.

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

SENATE RESOLUTION 1190

Senator Harris 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 House Bill No. 2255, relating to the continuation and functions of the State Securities Board; providing penalties, to consider and take action on the following matter:

Senate Rule 12.03(1) is suspended to permit the committee to change text in Subdivision (3), Subsection E, Section 2, The Securities Act (Article 581-2, Vernon's Texas Civil Statutes), as amended by SECTION 1.01 of the bill, to read as follows:

(3) is ineligible for membership under Subsection B of this section or Subsection B or C of Section 2-1 of this Act;

Explanation: The change is necessary to correct a cross-reference.

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 1831

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 1831** 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 1831** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chair; Shapiro, Lindsay, Armbrister, and Lucio.

SENATE BILL 192 WITH HOUSE AMENDMENT

Senator Lucio called **SB 192** 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 192** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to inclusion of certain ports of entry in state highway planning and funding.

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

SECTION 1. Subchapter I, Chapter 201, Transportation Code, is amended by adding Section 201.710 to read as follows:

Sec. 201.710. PLANNING AND FUNDING OF PORTS OF ENTRY. (a) In this section:

(1) "Port of entry" means a place designated by executive order of the president of the United States, by order of the United States secretary of the treasury, or by Act of the United States Congress at which a customs officer is authorized to accept entries of merchandise to collect duties, and to enforce the various provisions of the customs and navigation laws.

(2) "Project related to a port of entry" means a transportation project on the state highway system related to access to a port of entry in this state.

(b) This section applies only to a port of entry on the border with the United Mexican States. This section does not apply to a port of entry at an airport.

(c) The department shall include projects related to ports of entry in its unified transportation program or any successor to that program.

(d) A metropolitan planning organization that has a port of entry within its jurisdiction shall include projects related to ports of entry in its transportation improvement plan.

(e) In allocating money to projects, the department shall fund projects related to ports of entry from money other than North American Free Trade Agreement discretionary funds.

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

The amendment was read.

On motion of Senator Lucio, the Senate concurred in the House amendment to **SB 192** by a viva voce vote.

SENATE BILL 776 WITH HOUSE AMENDMENTS

Senator Harris called **SB 776** 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 776** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the accrual of interest on child support.

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

SECTION 1. Section 157.265, Family Code, is amended to read as follows:

Sec. 157.265. ACCRUAL OF INTEREST ON CHILD SUPPORT. (a) Interest accrues on the portion of delinquent child support that is greater than the amount of the monthly periodic support obligation at the rate of ~~six~~ [12] percent simple interest per year from the date the support is delinquent until the date the support is paid or the arrearages are confirmed and reduced to money judgment.

(b) Interest accrues on child support arrearages that have been confirmed and reduced to money judgment as provided in this subchapter at the rate of ~~six~~ [12] percent simple interest per year from the date the order is rendered until the date the judgment is paid.

(c) Interest accrues on a money judgment for retroactive or lump-sum child support at the annual rate of ~~six~~ [12] percent simple interest from the date the order is rendered until the judgment is paid.

SECTION 2. The change in law made by Section 157.265, Family Code, as amended by this Act, applies only to a child support payment that becomes due on or after the effective date of this Act. A child support payment that became due before the effective date of this Act is governed by the law in effect on the date the child support payment became due, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect January 1, 2002.

Floor Amendment No. 1

Amend **CSSB 776** by striking SECTION 2 of the bill (House committee printing page 1, line 21, through page 2, line 3) and substituting the following:

SECTION 2. The change in law made by Section 157.265, Family Code, as amended by this Act, applies only to a child support payment that becomes due or a money judgment for child support that is rendered on or after the effective date of this Act. A child support payment that became due or a money judgment for child support that was rendered before the effective date of this Act is governed by the law in effect on the date the child support payment became due or the money judgment was rendered, and the former law is continued in effect for that purpose.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 776**, on third reading, by striking SECTION 2 of the bill, as amended on second reading by the amendment by Goodman, and substituting the following:

SECTION 2. (a) This Act takes effect January 1, 2002.

(b) The change in law made by this Act applies only to:

(1) a child support payment that becomes due on or after the effective date of this Act; and

(2) unpaid child support that became due before the effective date of this Act and for which a court has not confirmed the amount of arrearages and rendered a money judgment.

(c) A money judgment for child support rendered before the effective date of this Act is governed by the law in effect on the date the judgment was rendered, and the former law is continued in effect for that purpose.

Floor Amendment No. 2 on Third Reading

Amend **CSSB 776**, on third reading, by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. (a) Subchapter A, Chapter 154, Family Code, is amended by adding Section 154.013 to read as follows:

Sec. 154.013. PAYMENTS IN EXCESS OF COURT-ORDERED AMOUNT.
(a) If a child support agency or local child support registry receives from an obligor who is not in arrears a child support payment in an amount that exceeds the court-ordered amount, the agency or registry, to the extent possible, shall give effect to any expressed intent of the obligor for the application of the amount that exceeds the court-ordered amount.

(b) If the obligor does not express an intent for the application of the amount paid in excess of the court-ordered amount, the agency or registry shall:

(1) credit the excess amount to the obligor's future child support obligation; and

(2) promptly disperse the excess amount to the obligee.

(c) This section does not apply to an obligee who is a recipient of public assistance under Chapter 31, Human Resources Code.

(b) Notwithstanding any other section of this Act, the change in law made by Section 154.013, Family Code, as added by this section, takes effect September 1, 2001, and applies only to a child support payment made on or after that date. A child support payment made before September 1, 2001, is governed by the law in effect on the date the payment was made, and the former law is continued in effect for that purpose.

The amendments were read.

On motion of Senator Harris, the Senate concurred in the House amendments to **SB 776** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 1317

Senator Haywood 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 1317** 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 1317** 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 Haywood, Chair; Ogden, Brown, Lucio, and Armbrister.

RECESS

The President at 2:26 p.m. announced the Senate would stand recessed until 3:30 p.m. today.

AFTER RECESS

The Senate met at 3:30 p.m. and was called to order by the President.

CONFERENCE COMMITTEE ON HOUSE BILL 2879

Senator Bivins called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2879** 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 2879** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Bivins, Chair; Ellis, Staples, Van de Putte, and Zaffirini.

HOUSE BILL 695 RECOMMITTED

On motion of Senator Wentworth and by unanimous consent, the Conference Committee Report on **HB 695** was recommitted to the conference committee.

CONFEREES REAPPOINTED

The President announced the reappointment of the following conferees on the part of the Senate on **HB 695**: Senators Wentworth, Chair; Carona, Fraser, Shapleigh, and Staples.

SENATE BILL 527 WITH HOUSE AMENDMENTS

Senator Moncrief called **SB 527** 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 527** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to taking regulatory action against assisted living facilities, including the imposition of administrative penalties.

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

SECTION 1. Section 247.002, Health and Safety Code, is amended by adding Subdivision (7) to read as follows:

(7) "Commissioner" means the commissioner of human services.

SECTION 2. Subchapter A, Chapter 247, Health and Safety Code, is amended by adding Section 247.0025 to read as follows:

Sec. 247.0025. IMMEDIATE THREAT OF HARM. For purposes of this chapter, there is considered to be an immediate threat to the health or safety of a resident, or a situation is considered to put the health or safety of a resident in immediate jeopardy, if there is a situation in which an assisted living facility's

noncompliance with one or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

SECTION 3. The section heading to Section 247.0272, Health and Safety Code, is amended to read as follows:

Sec. 247.0272. INSPECTOR TRAINING; REQUIRED EXAMINATION.

SECTION 4. Section 247.0272, Health and Safety Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) The department shall examine department employees who inspect or otherwise survey assisted living facilities under this chapter. In developing the examination, the department shall consult with operators of assisted living facilities or their representatives and with consumers of personal care services provided by assisted living facilities or representatives of consumers.

(d) A department employee may not independently inspect, survey, or take administrative action against an assisted living facility unless the employee has passed the examination administered under Subsection (c).

SECTION 5. Section 247.041, Health and Safety Code, is amended to read as follows:

Sec. 247.041. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

(a) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant, license holder, or a controlling person has:

(1) violated [for a violation of] this chapter or a rule, standard, or order adopted or license issued under this chapter in either a repeated or substantial manner; or

(2) committed any act described by Sections 247.0451(a)(2)-(6).

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) The status of a person as an applicant for a license or as a license holder is preserved until final disposition of the contested matter, except as the court having jurisdiction of a judicial review of the matter may order in the public interest for the welfare and safety of the residents.

(d) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving the denial, suspension, or revocation of a license under this section or the conduct with respect to which the denial, suspension, or revocation of the license is sought.

SECTION 6. Section 247.042, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) If the department finds an assisted living facility operating in violation of the standards prescribed by [under] this chapter and the violations create an immediate threat to the health and safety of a resident in the facility, the department may [shall] suspend the license or order immediate closing of all or part of the facility.

(e) The department and the State Office of Administrative Hearings shall expedite any hearing or decision involving an emergency suspension or closing order issued under this section.

SECTION 7. Section 247.0455, Health and Safety Code, is redesignated as Section 247.0459, Health and Safety Code, and amended to read as follows:

Sec. 247.0459 [247.0455]. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty against an assisted living [a personal care] facility that violates Section 166.004.

(b) A penalty assessed under this section shall be \$500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

SECTION 8. Subchapter C, Chapter 247, Health and Safety Code, is amended by adding Sections 247.0451 through 247.0457 to read as follows:

Sec. 247.0451. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who:

(1) violates this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter;

(2) makes a false statement, that the person knows or should know is false, of a material fact:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by the department;

(3) refuses to allow a representative of the department to inspect:

(A) a book, record, or file required to be maintained by an assisted living facility; or

(B) any portion of the premises of an assisted living facility;

(4) wilfully interferes with the work of a representative of the department or the enforcement of this chapter;

(5) wilfully interferes with a representative of the department preserving evidence of a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter; or

(6) fails to pay a penalty assessed under this chapter not later than the 30th day after the date the assessment of the penalty becomes final.

(b) Except as provided by Section 247.0452(c), the penalty may not exceed \$1,000 for each violation.

(c) The board shall establish gradations of penalties in accordance with the relative seriousness of the violation.

(d) In determining the amount of a penalty, the department shall consider any matter that justice may require, but must consider each of the following and make a record of the extent to which each of the following was considered:

(1) the gradations of penalties established under Subsection (c);

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;

(3) the history of previous violations;

(4) deterrence of future violations;

(5) efforts to correct the violation; and

(6) the size of the facility and of the business entity that owns the facility.

(e) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

Sec. 247.0452. RIGHT TO CORRECT. (a) The department may not collect an administrative penalty from an assisted living facility under Section 247.0451 if, not later than the 45th day after the date the facility receives notice under Section 247.0453(c), the facility corrects the violation.

(b) Subsection (a) does not apply:

(1) to a violation that the department determines results in serious harm to or death of a resident;

(2) to a violation described by Sections 247.0451(a)(2)-(6);

(3) to a second or subsequent violation of:

(A) a right of the same resident under Section 247.064; or

(B) the same right of all residents under Section 247.064; or

(4) to a violation described by Section 247.066, which contains its own right to correct provisions.

(c) An assisted living facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary of the date the correction was made, the department may assess and collect an administrative penalty for the subsequent violation. An administrative penalty assessed under this subsection is equal to three times the amount of the original penalty assessed but not collected. The department is not required to provide the facility with an opportunity under this section to correct the subsequent violation.

Sec. 247.0453. REPORT RECOMMENDING ADMINISTRATIVE PENALTY.

(a) The department shall issue a preliminary report stating the facts on which the department concludes that a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter has occurred if the department has:

(1) examined the possible violation and facts surrounding the possible violation; and

(2) concluded that a violation has occurred.

(b) The report may recommend a penalty under Section 247.0451 and the amount of the penalty.

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the charges;

(2) a statement of the amount of penalty recommended;

(3) a statement of whether the violation is subject to correction under Section 247.0452 and, if the violation is subject to correction under that section, a statement of:

(A) the date on which the assisted living facility must file with the department a plan of correction to be approved by the department; and

(B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and

(4) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Not later than the 20th day after the date on which the notice under Subsection (c) is received, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(e) If the violation is subject to correction under Section 247.0452, the assisted living facility shall submit a plan of correction to the department for approval not later than the 10th day after the date on which the notice under Subsection (c) is received.

(f) If the violation is subject to correction under Section 247.0452, and the person reports to the department that the violation has been corrected, the department shall inspect the correction or take any other step necessary to confirm the correction and shall notify the person that:

- (1) the correction is satisfactory and a penalty will not be assessed; or
- (2) the correction is not satisfactory and a penalty is recommended.

(g) Not later than the 20th day after the date on which a notice under Subsection (f)(2) is received, the person charged may:

- (1) give to the department written consent to the department's report, including the recommended penalty; or
- (2) make a written request for a hearing.

(h) If the person charged with the violation consents to the penalty recommended by the department or does not timely respond to a notice sent under Subsection (c) or (f)(2), the commissioner or the commissioner's designee shall assess the penalty recommended by the department.

(i) If the commissioner or the commissioner's designee assesses the recommended penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

Sec. 247.0454. HEARING ON ADMINISTRATIVE PENALTY. (a) An administrative law judge shall order a hearing and give notice of the hearing if a person charged with a violation under Section 247.0451 timely requests a hearing.

(b) The hearing shall be held before an administrative law judge.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner or the commissioner's designee a written decision regarding the occurrence of a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter and a recommendation regarding the amount of the proposed penalty if a penalty is warranted.

(d) Based on the findings of fact and conclusions of law and the recommendation of the administrative law judge, the commissioner or the commissioner's designee by order may:

- (1) find that a violation has occurred and assess an administrative penalty; or
- (2) find that a violation has not occurred.

(e) If the commissioner or the commissioner's designee finds that a violation has not occurred, the commissioner or the commissioner's designee shall order that all records reflecting that the department found a violation had occurred and attempted to impose an administrative penalty shall be expunged except:

- (1) records obtained by the department during its investigation; and
- (2) the administrative law judge's findings of fact.

(f) Proceedings under this section are subject to Chapter 2001, Government Code.

Sec. 247.0455. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) The commissioner or the commissioner's designee shall give notice of the findings made under Section 247.0454(d) to the person charged. If the commissioner or the commissioner's designee finds that a violation has occurred, the commissioner or the commissioner's designee shall give to the person charged written notice of:

- (1) the findings;
- (2) the amount of the administrative penalty;
- (3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;
- (4) whether action under Section 247.0457 is required in lieu of payment of all or part of the penalty; and
- (5) the person's right to judicial review of the order of the commissioner or the commissioner's designee.

(b) Not later than the 30th day after the date on which the order of the commissioner or the commissioner's designee is final, the person charged with the penalty shall:

- (1) pay the full amount of the penalty; or
- (2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the department's dissatisfaction with efforts to correct the violation, or any combination of these issues.

(c) Notwithstanding Subsection (b), the department may permit the person to pay a penalty in installments or may require the person to use all or part of the amount of the penalty in accordance with Section 247.0457.

(d) If the person does not pay the penalty within the period provided by Subsection (b) or in accordance with Subsection (c), if applicable:

- (1) the penalty is subject to interest; and
- (2) the department may refer the matter to the attorney general for collection of the penalty and interest.

(e) Interest under Subsection (d)(1) accrues:

- (1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and
- (2) for the period beginning on the day after the date on which the penalty becomes due and ending on the date the penalty is paid.

(f) If the amount of the penalty is reduced or the assessment of a penalty is not upheld on judicial review, the commissioner shall:

- (1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or
- (2) execute a release of the supersedeas bond if one has been posted.

(g) Accrued interest on amounts remitted by the commissioner under Subsection (f)(1) shall be paid:

- (1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and
- (2) for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the person charged.

Sec. 247.0456. APPLICATION OF OTHER LAW. The department may not assess a monetary penalty under this chapter and a monetary penalty under Chapter 32, Human Resources Code, for the same act or failure to act.

Sec. 247.0457. AMELIORATION OF VIOLATION. (a) In lieu of demanding payment of an administrative penalty assessed under Section 247.0451, the commissioner in accordance with this section may allow the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the assisted living facility affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of a resident of the assisted living facility.

(c) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of the recommended assessment of an administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 247.0454.

(d) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 247.0454 if the department approves the plan.

(e) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the assisted living facility that will improve services to or quality of care of residents of the assisted living facility;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the assisted living facility;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a time line for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(f) A plan for amelioration may include proposed changes to:

(1) improve staff recruitment and retention;

(2) offer or improve dental services for residents; and

(3) improve the overall quality of life for residents.

(g) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(h) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the department shall deny a pending request for a hearing submitted by the person under Section 247.0453.

(i) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

SECTION 9. Subsection (b), Section 247.049, Health and Safety Code, is amended to read as follows:

(b) Subsection (a) does not:

(1) bar the admission into evidence of department reports or other documents in an enforcement action in which the state or an agency or political subdivision of the state is a party, including:

(A) an action seeking injunctive relief under Section 247.044;

(B) an action seeking imposition of a civil penalty under Section 247.045; ~~and~~

(C) a contested case hearing involving denial, suspension, or revocation of a license issued under this chapter; ~~and~~

(D) an action seeking imposition of an administrative penalty under this subchapter;

(2) bar the admission into evidence of department reports or other documents that are offered:

(A) to establish warning or notice to an assisted living facility of a relevant department determination; or

(B) under any rule or evidentiary predicate of the Texas Rules of Evidence;

(3) prohibit or limit the testimony of a department employee, in accordance with the Texas Rules of Evidence, as to observations, factual findings, conclusions, or determinations that an assisted living facility violated a standard prescribed under this chapter if the observations, factual findings, conclusions, or determinations were made in the discharge of the employee's official duties for the department; or

(4) prohibit or limit the use of department reports or other documents in depositions or other forms of discovery conducted in connection with a civil action if use of the reports or other documents appears reasonably calculated to lead to the discovery of admissible evidence.

SECTION 10. Section 247.051, Health and Safety Code, is transferred to Subchapter A, Chapter 247, Health and Safety Code, renumbered as Section 247.006, Health and Safety Code, and amended to read as follows:

Sec. 247.006 [247.051]. **ADVISORY COMMITTEE.** (a) The Advisory Committee on Assisted Living Facilities consists of nine members appointed by the board. The commissioner of human services shall appoint two staff members from the department to serve as nonvoting advisory members. In appointing staff members under this subsection, the commissioner shall appoint one member as a representative of long-term care policy and one member as a representative of long-term care regulation.

(b) The board shall appoint the advisory committee to provide for a balanced representation of assisted living [~~personal care~~] providers and consumers and shall appoint one member who has expertise in life safety code regulations. At least one of the provider members must be representative of a nonprofit facility, and at least one member must be a family member of a resident of a facility.

(c) The committee shall elect the presiding officer from among its members.

(d) The committee shall advise the department on standards for licensing assisted living facilities and on the implementation of this chapter.

SECTION 11. The subchapter heading to Subchapter D, Chapter 247, Health and Safety Code, is repealed.

SECTION 12. Subchapter E, Chapter 247, Health and Safety Code, is redesignated as Subchapter D, Chapter 247, Health and Safety Code, and the subchapter heading is amended to read as follows:

SUBCHAPTER D [E]. MISCELLANEOUS PROVISIONS

SECTION 13. Subchapter C, Chapter 247, Health and Safety Code, is amended by adding Section 247.051 to read as follows:

Sec. 247.051. **INFORMAL DISPUTE RESOLUTION.** (a) The Health and Human Services Commission by rule shall establish an informal dispute resolution process in accordance with this section. The process must provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding under this chapter. The informal dispute resolution process must require:

(1) the assisted living facility to request informal dispute resolution not later than the 10th day after the date of notification by the department of the violation of a standard or standards;

(2) the Health and Human Services Commission to complete the process not later than the 30th day after the date of receipt of a request from the assisted living facility for informal dispute resolution; and

(3) any individual representing an assisted living facility in an informal dispute resolution process to register with the Health and Human Services Commission and disclose the following:

(A) the individual's employment history during the preceding five years, including employment in regulatory agencies of this state and other states;

(B) ownership, including the identity of the controlling person or persons, of the assisted living facility the individual is representing before the Health and Human Services Commission; and

(C) the identity of other entities the individual represents or has represented before the Health and Human Services Commission during the preceding 24 months.

(b) The Health and Human Services Commission shall adopt rules to adjudicate claims in contested cases.

(c) The Health and Human Services Commission may not delegate its responsibility to administer the informal dispute resolution process established by this section to another state agency.

SECTION 14. Section 247.066, Health and Safety Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) If a department inspector determines that a resident is inappropriately placed at a facility, the facility is not required to move the resident if, not later than the 10th business day after the date that the facility is informed of the specific basis of the inspector's determination, the facility:

(1) obtains a written assessment from a physician that the resident is appropriately placed;

(2) obtains a written statement:

(A) from the resident that the resident wishes to remain in the facility; or

(B) from a family member of the resident that the family member wishes for the resident to remain in the facility, if the resident lacks capacity to give a statement under this subsection;

(3) states in writing that the facility wishes for the resident to remain in the facility; and

(4) applies for and obtains a waiver from the department of all applicable requirements for evacuation that the facility does not meet with respect to the resident, if the facility does not meet all requirements for the evacuation of residents with respect to the resident.

(d) If a department inspector determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or does not obtain the written statements prescribed by Subsection (c) that would allow the resident to remain in the facility notwithstanding the determination of the inspector, the department may not assess an administrative penalty against the facility because of the inappropriate placement. However, the facility shall discharge the resident. The resident is allowed 30 days after the date of discharge to move from the facility. A discharge required under this subsection must be made notwithstanding:

(1) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(2) the terms of any contract.

(e) To facilitate obtaining the written statements required under Subsections (c)(1)-(3), the department shall develop standard forms that must be used under Subsections (c)(1)-(3). The department shall develop criteria under which the department will determine, based on a resident's specific situation, whether it will grant or deny a request for a waiver under Subsection (c)(4).

SECTION 15. Subchapter D, Chapter 242, Health and Safety Code, is amended by adding Sections 242.0965 and 242.0975 to read as follows:

Sec. 242.0965. ASSISTED LIVING FACILITY TRUST FUND AND EMERGENCY ASSISTANCE FUNDS. (a) The assisted living facility trust fund is a trust fund with the comptroller and shall be made available to the department for expenditures without legislative appropriation to make emergency assistance funds available to an assisted living facility.

(b) A trustee of an assisted living facility may use the emergency assistance funds only to alleviate an immediate threat to the health or safety of the residents. The use may include payments for:

(1) food;

(2) medication;

(3) sanitation services;

(4) minor repairs;

(5) supplies necessary for personal hygiene; or

(6) services necessary for the personal care, health, and safety of the residents.

(c) A court may order the department to disburse emergency assistance funds to an assisted living facility if the court finds that:

(1) the assisted living facility has inadequate funds accessible to the trustee for the operation of the assisted living facility;

(2) an emergency exists that presents an immediate threat to the health and safety of the residents; and

(3) it is in the best interests of the health and safety of the residents that funds are immediately available.

(d) The department shall disburse money from the assisted living facility trust fund as ordered by the court in accordance with board rules.

(e) Any unencumbered amount in the assisted living facility trust fund in excess of \$500,000 at the end of each fiscal year shall be transferred to the credit of the general revenue fund and may be appropriated only to the department for its use in administering and enforcing Chapter 247.

Sec. 242.0975. ADDITIONAL LICENSE FEE—ASSISTED LIVING FACILITIES. (a) In addition to the license fee provided by Section 247.024, the department shall adopt an annual fee to be charged and collected if the amount of the assisted living facility trust fund is less than \$500,000. The fee shall be deposited to the credit of the assisted living facility trust fund created by this subchapter.

(b) The department may charge and collect a fee under this section more than once each year only if necessary to ensure that the amount in the assisted living facility trust fund is sufficient to make the disbursements required under Section 242.0965. If the department makes a second or subsequent assessment under this subsection in any year, the department shall notify the governor and the Legislative Budget Board.

(c) The department shall set the fee on the basis of the number of beds in assisted living facilities required to pay the fee and in an amount necessary to provide not more than \$500,000 in the fund.

SECTION 16. The section heading of Section 242.097, Health and Safety Code, is amended to read as follows:

Sec. 242.097. ADDITIONAL LICENSE FEE—NURSING AND CONVALESCENT HOMES.

SECTION 17. Subsection (d), Section 247.0271, Health and Safety Code, is repealed.

SECTION 18. The Texas Department of Human Services shall adopt rules to implement Section 247.0452, Health and Safety Code, as added by this Act, and Section 247.066, Health and Safety Code, as amended by this Act, not later than January 1, 2002.

SECTION 19. This Act takes effect September 1, 2001.

Floor Amendment No. 1

Amend **CSSB 527** by adding the following appropriately numbered SECTION to the bill and renumbering existing SECTIONS of the bill appropriately:

SECTION _____. Section 247.004, Health and Safety Code, is amended to read as follows:

Sec. 247.004. EXEMPTIONS. This chapter does not apply to:

(1) a boarding facility that has rooms for rent and that may offer community meals, light housework, meal preparation, transportation, grocery shopping, money management, or laundry services but that does not provide personal care services;

(2) an establishment conducted by or for the adherents of the Church of Christ, Scientist, for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing without the use of any drug or material remedy if the establishment complies with local safety, sanitary, and quarantine ordinances and regulations;

(3) a facility conducted by or for the adherents of a qualified religious society classified as a tax-exempt organization under an Internal Revenue Service group exemption ruling for the purpose of providing personal care services without charge solely for the society's professed members or ministers in retirement, if the facility complies with local safety, sanitation, and quarantine ordinances and regulations; ~~or~~

(4) a facility that provides personal care services only to persons enrolled in a program that is funded in whole or in part by the Texas Department of Mental Health and Mental Retardation and that is monitored by the Texas Department of Mental Health and Mental Retardation or its designated local authority in accordance with standards set by the Texas Department of Mental Health and Mental Retardation; or

(5) a facility that complies with local safety, sanitation, and quarantine ordinances and regulations and:

(A) provides residential services, vocational training, and personal care services only to developmentally disabled adults;

(B) serves as an educational or research facility for one or more institutions of higher education; and

(C) is owned or operated by an organization that is exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization under Section 501(c)(3) of the code.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 527** on third reading in SECTION 8 of the bill (house committee report version) by inserting the following new Subsection (f) at the end of Section 247.0451, Health and Safety Code, as added by the bill:

(f) The department may not assess a penalty under this section against a resident of an assisted living facility unless the resident is also an employee of the facility or a controlling person.

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 527** 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; Bernsen, Ogden, Carona, and Shapleigh.

SENATE BILL 886 WITH HOUSE AMENDMENT

Senator Ogden called **SB 886** 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 886**, in SECTION 15 of the bill, amended Section 621.508, Transportation Code (Committee Printing, page 10, line 17-page 11, line 1), by striking Subdivisions (2)-(4) and substituting the following:

(2) was loaded with timber, pulp wood, wood chips, or cotton, livestock, or other agricultural products that are:

(A) in their natural state; and

(B) being transported from the place of production to the place of first marketing or first processing; and

(3) was not being operated on a portion of the national system of interstate and defense highways.

The amendment was read.

Senator Ogden 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 886** 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 Ogden, Chair; Shapiro, Harris, Lucio, and Fraser.

SENATE BILL 1212 WITH HOUSE AMENDMENT

Senator Zaffirini called **SB 1212** 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 1212** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the examination requirement for licensing as a chemical dependency counselor.

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

SECTION 1. Section 504.157, Occupations Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) An applicant who fails the examination may take a subsequent examination on payment of the required examination fee. [~~An applicant may not be reexamined more than three times.~~]

(d) The commission by rule shall establish the criteria under which an applicant may take a subsequent examination under Subsection (c).

SECTION 2. The change in law made by this Act to Section 504.157(c), Occupations Code, applies to a person whose first attempt to pass an examination under Section 504.156, Occupations Code, occurs before, on, or after the effective date of this Act. A person who failed an examination under Section 504.156, Occupations Code, before the effective date of this Act may take subsequent examinations as provided by Section 504.157(c), Occupations Code, as amended by this Act.

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

The amendment was read.

Senator Zaffirini moved to concur in the House amendment to **SB 1212**.

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

Present-not voting: Mr. President.

SENATE BILL 1764 WITH HOUSE AMENDMENT

Senator Zaffirini called **SB 1764** 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 1764** as follows:

On page 5, between lines 18 and 19 insert the following new SECTION:

"SECTION 11. CHANGE OF DISTRICT NAME. The board of directors may change the district's name when the district annexes territory."

Re-number subsequent subsections.

The amendment was read.

On motion of Senator Zaffirini, the Senate concurred in the House amendment to **SB 1764** by a viva voce vote.

SENATE BILL 409 WITH HOUSE AMENDMENTS

Senator Cain called **SB 409** 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 409** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the powers and duties of the Texas Turnpike Authority division of the Texas Department of Transportation, including the power of eminent domain, and to the abolishment of the board of directors of that division.

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

SECTION 1. Section 361.001(4), Transportation Code, is amended to read as follows:

(4) "Turnpike project" means a [toH] highway constructed, maintained, or operated under this chapter as part of the state highway system and any improvement, extension, or expansion to the highway and includes:

- (A) a facility to relieve traffic congestion and promote safety;
- (B) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll house, service road, ramp, or service station;
- (C) an administration, storage, or other building the authority considers necessary to operate the project; ~~and~~
- (D) property rights, easements, and interests the authority acquires to construct or operate the project; and

(E) a parking area or structure, rest stop, park, and any other improvement or amenity the authority considers necessary, useful, or beneficial for the operation of a turnpike project.

SECTION 2. Section 361.004, Transportation Code, is amended to read as follows:

Sec. 361.004. CONSTRUCTION COSTS. (a) The cost of acquisition, construction, improvement, extension, or expansion of a turnpike project under this chapter includes the cost of:

- (1) the actual acquisition, construction, improvement, extension, or expansion of the project;
- (2) acquisition of real property, rights-of-way, property rights, easements, and interests;
- (3) machinery and equipment;
- (4) interest before, during, and for one year after construction, improvement, extension, or expansion;
- (5) traffic estimates, engineering and legal services, plans, specifications, surveys, appraisals, cost and revenue estimates, and other expenses necessary or incident to determining the feasibility of the construction, improvement, extension, or expansion;
- (6) necessary or incidental administrative, legal, and other expenses;
- (7) financing; and
- (8) placement of the project in operation and expenses related to the initial operation of the turnpike project.

(b) Costs attributable to a turnpike project for which bonds are issued that are incurred before the issuance of the bonds may be reimbursed from the proceeds of the sale of the bonds.

SECTION 3. Sections 361.031(b)-(g), Transportation Code, are amended to read as follows:

(b) The authority may perform, procure from other divisions of the department with the consent of the department, or procure from outside service providers any portion of the services the authority requires for:

- (1) right-of-way acquisition;
- (2) roadway finance, design, and construction;
- (3) environmental affairs; ~~or~~
- (4) legal services;
- (5) roadway maintenance;
- (6) toll revenue collection; or
- (7) traffic operations.

~~(c) [With the approval of the commission, the authority may perform, procure from other divisions of the department with the consent of the department, or procure from outside service providers any portion of the services the authority requires for roadway maintenance, toll revenue collection, or traffic operations.~~

~~[(d)]~~ To perform its functions under this chapter, the authority may use the facilities and personnel of the department in the same manner as other divisions of the department.

~~(d) [(e)]~~ If the comptroller assigns numbers to state agencies for accounting purposes, the comptroller shall assign a separate agency number to the authority.

~~(e) [(f)]~~ The exercise by the authority of the powers conferred by this chapter in the construction, operation, and maintenance of a turnpike project is:

- (1) in all respects for the benefit of the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions and public safety; and
- (2) an essential governmental function of the state.

(f) ~~[(g)]~~ The commission shall employ a director of the authority who serves as the authority's chief administrative officer. The director serves at the pleasure of the commission.

SECTION 4. Section 361.042(b), Transportation Code, is amended to read as follows:

(b) The authority may:

- (1) construct, maintain, repair, and operate turnpike projects in this state;
- (2) acquire, hold, and dispose of property in the exercise of its powers and the performance of its duties under this chapter;
- (3) with the approval of the governor and the commission, enter into contracts or operating agreements with similar authorities or agencies of another state, including a state of the United Mexican States;
- (4) enter into contracts or agreements necessary or incidental to its duties and powers under this chapter;
- (5) employ consulting engineers, accountants, construction and financial experts, superintendents, managers, and other employees and agents the authority considers necessary and set their compensation;
- (6) employ attorneys to advance or defend legal actions pertaining to the division's activities, notwithstanding any other law to the contrary, including Section 402.0212, Government Code;
- (7) receive grants for the construction of a turnpike project and receive contributions of money, property, labor, or other things of value from any source to be used for the purposes for which the grants or contributions are made;
- (8) adopt and enforce rules~~[-if the commission concurs;-]~~ not inconsistent with this chapter for the use of any turnpike project, including rules establishing speed limits and maximum allowable vehicle and load weight limits for turnpike projects; and
- (9) do all things necessary or appropriate to carry out the powers expressly granted by this chapter.

SECTION 5. Section 361.054, Transportation Code, is amended to read as follows:

Sec. 361.054. AUDIT. Notwithstanding any other law to the contrary, the [The] authority shall have an independent [a] certified public accountant audit the authority's books and accounts at least annually. The cost of the audit may be treated as part of the cost of construction or operation of a turnpike project. This section does not affect the ability of a state agency to audit the authority's books and accounts.

SECTION 6. Section 361.131, Transportation Code, is amended to read as follows:

Sec. 361.131. POWERS AND PROCEDURES OF AUTHORITY IN ACQUIRING PROPERTY. Except as otherwise provided by this chapter, the authority, acting by and through the board, has the same powers and may use the same procedures as the commission or the department in acquiring property.

SECTION 7. Sections 361.132(a) and (c), Transportation Code, are amended to read as follows:

(a) The authority [board] may acquire, in the name of the state, public or private real property it determines necessary or convenient for the construction, expansion, enlargement, extension, improvement, or operation of a turnpike project or for otherwise carrying out this chapter.

(c) The authority [~~board~~] may acquire the real property by any method, including purchase and condemnation. The authority [~~board~~] may purchase public or private real property on the terms and at the price the authority [~~board~~] and the owner consider reasonable.

SECTION 8. Section 361.135(b), Transportation Code, is amended to read as follows:

(b) The board, with the concurrence of the commission, may condemn real property that the authority determines is:

(1) necessary or appropriate to construct or to efficiently operate a turnpike project;

(2) necessary to restore public or private property damaged or destroyed, including property necessary or convenient to mitigate an environmental effect that directly results from the construction, operation, or maintenance of a turnpike project;

(3) necessary for access, approach, service, and interchange roads; ~~or~~

(4) necessary to provide proper drainage and ground slope for a turnpike project; or

(5) necessary otherwise to carry out this chapter.

SECTION 9. Section 361.137, Transportation Code, is amended by adding Subsection (f) to read as follows:

(f) After a declaration of taking is filed, the case shall proceed as any other case in eminent domain under Chapter 21, Property Code.

SECTION 10. Section 361.141(a), Transportation Code, is amended to read as follows:

(a) The authority may not pay compensation for public real property, parkways, streets, highways, alleys, or reservations it takes, except for:

(1) parks and playgrounds; and

(2) property acquired under restrictions and limitations requiring payment of compensation.

SECTION 11. Section 361.171, Transportation Code, is amended by adding Subsection (g) to read as follows:

(g) In addition to other permitted uses, the proceeds of a bond issue may be used to pay costs incurred before the issuance of the bonds, including costs of environmental review, design, planning, acquisition of property, relocation assistance, construction, and operation.

SECTION 12. Section 361.179(a), Transportation Code, is amended to read as follows:

(a) The authority may:

(1) impose tolls for the use of each turnpike project and the different parts or sections of each turnpike project; and

(2) notwithstanding anything in Chapter 202 to the contrary, contract with a person for the use of part of a turnpike project or lease or sell part of a turnpike project, including the right-of-way adjoining the paved portion, for any purpose, including placing on the adjoining right-of-way a gas station, garage, store, hotel, restaurant, railroad tracks, telephone line, telecommunication line, telecommunications facilities and equipment, and electric line, and set the terms for the use, lease, or sale.

SECTION 13. Section 361.181(a), Transportation Code, is amended to read as follows:

(a) Notwithstanding Section 361.179 or any other provision of this chapter to the contrary, the authority may pay the expenses of studying the cost and feasibility and

any other expenses relating to the preparation and issuance of turnpike revenue bonds for the construction of a proposed turnpike project by:

- (1) using available revenue derived from an existing turnpike project;
- (2) borrowing money and issuing interest-bearing evidences of indebtedness or entering into a loan agreement payable out of available revenue anticipated to be derived from the operation of an existing turnpike project; ~~and~~
- (3) pledging available revenue anticipated to be derived from the operation of an existing turnpike project; and
- (4) using money received from the department for feasibility studies undertaken at the request of the commission.

SECTION 14. Section 361.182, Transportation Code, is amended by adding Subsection (i) to read as follows:

(i) The commission may request that the authority conduct a feasibility study for any proposed turnpike project. The expenses of a study requested by the commission shall be paid for by the department. If the turnpike project is constructed, the department shall be reimbursed for money paid to the authority from the proceeds of turnpike revenue bonds issued for, or other proceeds that may be used for, the construction, improvement, extension, expansion, or operation of the project.

SECTION 15. Section 361.232(c), Transportation Code, is amended to read as follows:

(c) If feasible, the [The] authority shall provide access to properties previously abutting [move and replace, with an equal or better facility,] a county or other public road that is taken for a turnpike project and [affects or severs. The authority] shall pay abutting property owners the expenses or [and] any resulting damages for denial of access to the road.

SECTION 16. Sections 361.234(d), (e), and (f), Transportation Code, are amended to read as follows:

(d) The authority and the public utility shall have 90 days from the date the authority provides written notice to the public utility of the need for relocation of utility facilities to reach an agreement concerning the period for completion of the relocation. The 90-day period may be extended by mutual written agreement. If the parties are unable to reach an agreement for the period for completion of the relocation, the authority may specify a reasonable period. The authority may reduce the total costs to be paid by the authority by 10 percent for each 30-day period or portion of a 30-day period that the relocation exceeds the period specified by agreement between the authority and public utility or as reasonably specified by the authority if no agreement is reached, unless the public utility's failure to timely perform results from a material action or inaction by the authority or from conditions that were beyond the reasonable control of the utility. If an owner or operator of a public utility facility does not timely remove or relocate the facility as required under Subsection (b) and the authority relocates the facility, the authority shall relocate the facility in a safe manner that complies with applicable law and utility construction standards recognized by the authority and that minimizes disruption of utility service and shall notify the public utility and other appropriate regulatory agencies of the relocation. A public utility shall reimburse the authority for expenses reasonably incurred for the relocation of a public utility facility unless the failure of the public utility to timely relocate the facility was the result of circumstances beyond the control of the utility, in which case the authority shall pay the cost of the relocation.

(e) Notwithstanding anything in this chapter to the contrary:

(1) Subchapter B, Chapter 181, Utilities Code, applies to the laying and maintenance of pipes, mains, conductors, and other facilities used for conducting gas by a gas utility described in that subchapter through, under, along, across, and over a turnpike project constructed by the authority; and

(2) the authority has the powers and duties assigned to the commission by Subchapter B, Chapter 181, Utilities Code.

(f) Notwithstanding anything in this chapter to the contrary, Subchapter C, Chapter 181, Utilities Code, applies to the erection, construction, maintenance, and operation of lines and poles owned by an electric utility, as that term is defined by Section 181.041, Utilities Code, over, under, across, on, and along a turnpike project constructed by the authority. The authority has the powers and duties delegated to the commission by Subchapter C, Chapter 181, Utilities Code.

(g) [(e)] Notwithstanding anything in this chapter to the contrary, the laws of this state applicable to the use of public roads, streets, and waters of this state by a telephone and telegraph corporation apply to the erection, construction, maintenance, location, and operation of a line, pole, or other fixture by a telephone and telegraph corporation over, under, across, on, and along a turnpike project constructed by the authority.

(h) [(f)] In this section, "public utility facility" means a track, pipe, main, conduit, cable, wire, tower, pole, or other item of equipment or an appliance of a public utility or other person.

SECTION 17. Section 361.306(a), Transportation Code, is amended to read as follows:

(a) The authority shall adopt rules, procedures, and guidelines governing negotiations to promote fairness, obtain private participants in turnpike projects, and promote confidence among those participants. The rules must contain criteria relating to the qualifications of the participants and the award of the contracts and may authorize the authority to impose a fee for reviewing proposals for private involvement in a turnpike project.

SECTION 18. Sections 545.354(e), (f), and (g), Transportation Code, are amended to read as follows:

~~(e) [Sections 545.353 and 545.355 to 545.359 do not apply to any part of a turnpike project constructed and maintained by the authority and covered under Subsection (d) unless a turnpike constructed by the authority becomes part of the state highway system, in which event the Texas Transportation Commission has the sole authority to alter prima facie speed limits on the turnpike project.~~

[(f)] The authority may not:

- (1) alter the general rule established by Section 545.351(a); or
- (2) establish a speed limit of more than 70 miles per hour.

(f) [(g)] The authority, in conducting the engineering and traffic investigation specified by Subsection (a), shall follow the procedure for establishing speed zones adopted by the Texas Department of Transportation.

SECTION 19. Section 621.102, Transportation Code, is amended by amending Subsection (a) and adding Subsection (h) to read as follows:

(a) Except as provided by Subsection (h), the [The] commission may set the maximum gross weight of a vehicle and its load, maximum gross weight of a combination of vehicles and loads, maximum axle load, or maximum wheel load that

may be moved over a state highway or a farm or ranch road if the commission finds that heavier maximum weight would rapidly deteriorate or destroy the road or a bridge or culvert along the road. A maximum weight or load set under this subsection may not exceed the maximum set by statute for that weight or load.

(h) The Texas Turnpike Authority may set, in the same manner as the commission under this section, the maximum gross weight of a vehicle and its load, the maximum gross weight of a combination of vehicles and loads, maximum axle load, or maximum wheel load that may be moved over a turnpike project as defined by Section 361.001.

SECTION 20. (a) The board of directors of the Texas Turnpike Authority division of the Texas Department of Transportation is abolished. All powers, duties, obligations, rights, contracts, leases, records, employees, and real or personal property of the board, including those enumerated in this Act, are transferred to the Texas Transportation Commission. Unspent and unobligated appropriations and other funds under the control of the board shall be transferred to the Texas Transportation Commission. The board with the agreement of the commission may transfer any records, employees, or real or personal property of the board to the commission in preparation for the transfer provided for in this section.

(b) The abolishment of the board of directors of the Texas Turnpike Authority division of the Texas Department of Transportation does not affect the validity of a right, privilege, or obligation accrued, a contract or acquisition made, any liability incurred, a permit or license issued, a penalty, forfeiture, or punishment assessed, a rule adopted, a proceeding, investigation, or remedy begun, a decision made, or other action taken by or in connection with the board.

(c) All rules, policies, procedures, and decisions of the board of directors of the Texas Turnpike Authority division of the Texas Department of Transportation are continued in effect as rules, policies, procedures, and decisions of the Texas Transportation Commission until superseded by a rule or other appropriate action of the commission.

(d) Any action or proceeding before the board of directors of the Texas Turnpike Authority division of the Texas Department of Transportation is transferred without change in status to the Texas Transportation Commission, and the commission assumes, without a change in status, the position of the board in any action or proceeding to which the board is a party.

(e) If S.B. No. 4, 77th Legislature, Regular Session, 2001, is enacted and becomes law, all unspent and unobligated appropriations and other funds transferred to the Texas Transportation Commission under Subsection (a) of this section shall be transferred to the Texas Mobility Fund on the effective date of S.B. No. 4.

SECTION 21. 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 409** as follows:

(1) Strike SECTIONS 3, 4, 18, and 19 of the bill and renumber the subsequent sections accordingly.

(2) Add the following appropriately numbered SECTION to the bill and renumber the subsequent sections accordingly:

"SECTION _____. Subchapter A, Chapter 361, Transportation Code, is amended by adding Section 361.005 to read as follows:

Sec. 361.005. TRANSFER OF BOARD'S POWERS AND DUTIES. (a) The powers and duties of the board under this chapter or other law are transferred to the commission.

(b) A reference in law to the board is a reference to the commission."

(3) Add the following appropriately numbered SECTION to the bill and renumber the subsequent sections accordingly:

"SECTION _____. Section 361.031(b)-(e), Section 361.031(g), Sections 361.032-361.037, 362.004, and 362.005, Transportation Code, are repealed."

(4) Strike SECTION 21 of the bill and substitute the following:

"SECTION 21. This Act takes effect September 1, 2001."

The amendments were read.

Senator Cain 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 409** 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 Cain, Chair; Madla, Armbrister, Carona, and Shapiro.

SENATE BILL 224 WITH HOUSE AMENDMENT

Senator Shapleigh called **SB 224** 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 224** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to requiring the Texas Department of Transportation to meet with transportation officials of bordering states to discuss transportation and infrastructure issues.

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

SECTION 1. Subchapter D, Chapter 201, Transportation Code, is amended by adding Section 201.207 to read as follows:

Sec. 201.207. CROSS-BORDER TRANSPORTATION AND INFRASTRUCTURE MEETINGS. The department shall initiate efforts to meet at least semiannually with the department's counterparts in those states of the United Mexican States that border this state to discuss transportation and infrastructure issues.

To the extent practicable, the department shall meet at least semiannually with its counterparts in those bordering states to discuss transportation and infrastructure issues.

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

The amendment was read.

On motion of Senator Shapleigh, the Senate concurred in the House amendment to **SB 224** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 2530

Senator Ellis 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 2530** 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 2530** 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 Ellis, Chair; Sibley, Fraser, Bivins, and Lucio.

CONFERENCE COMMITTEE ON HOUSE BILL 393

Senator Ellis 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 393** 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 393** 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 Ellis, Chair; Moncrief, Carona, West, and Zaffirini.

CONFERENCE COMMITTEE ON SENATE BILL 450 DISCHARGED

On motion of Senator Duncan and by unanimous consent, the Senate conferees on **SB 450** were discharged.

Question—Shall the Senate concur in the House amendment to **SB 450**?

On motion of Senator Duncan and by unanimous consent, the Senate concurred in the House amendment to **SB 450**.

SENATE BILL 217 WITH HOUSE AMENDMENT

Senator Fraser called **SB 217** 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 217** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS appropriately:

SECTION _____. Section 542.007(a), Transportation Code, is amended to read as follows:

(a) This section applies only to a subdivision that is located in the unincorporated area of a county with a population of 100,000 [~~10,000~~] or less.

The amendment was read.

On motion of Senator Fraser, the Senate concurred in the House amendment to **SB 217** by a viva voce vote.

SENATE BILL 1496 WITH HOUSE AMENDMENTS

Senator Barrientos called **SB 1496** 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 1496** immediately before SECTION 15 of the bill (House committee report, page 12, between lines 17 and 18), by inserting the following appropriately numbered SECTION and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION _____. If the General Services Commission is abolished under Section 2152.002, Government Code, any reference in this Act to the "commission" or to the General Services Commission is a reference to the Texas Workforce Commission.

Floor Amendment No. 2

Amend **SB 1496** as follows:

On page 4, line 21, between "Children" and the period, insert "or the National Child Care Association".

The amendments were read.

On motion of Senator Barrientos, the Senate concurred in the House amendments to **SB 1496** by a viva voce vote.

(Senator Sibley in Chair)

SENATE BILL 8 WITH HOUSE AMENDMENT

Senator Cain called **SB 8** 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 8** as follows:

In SECTION 3 of the bill, strike the existing Sections 4 and 5, Art. 21.53N, and substitute the following in lieu thereof:

Sec. 4. PENALTIES. (a) A health benefit plan as described by Section 2 of this article that is found to be in violation of or failing to comply with this article is subject

to the sanctions authorized by Chapter 82 of this code. The commissioner may also use the cease and desist procedures authorized by Chapter 83 of this code and, in accordance with the provisions of that chapter, direct the plan to make complete restitution, which shall not be less than the amount of economic damages, to each Texas insured or health care provider that is harmed by the violation. Such restitution may include reasonable attorney's fees incurred by a person making a complaint under this article. Notwithstanding the provisions of this section, the commissioner may order the greater of complete restitution or economic damages.

(b) In addition to imposing the sanctions authorized by Subsection (a) of this section, the commissioner may impose an administrative penalty in accordance with Chapter 84 of this code. Upon a finding that the plan knowingly violated the provisions of this article, the commissioner may impose an administrative penalty not to exceed \$25,000 in addition to the penalty authorized by Section 84.022.

(c) The commissioner shall make a determination of a violation of this article and impose the appropriate sanctions within 120 days of the date a complaint alleging a violation is filed.

(d) The procedural requirements established by Chapter 84, Subchapter C, of this codes shall govern the imposition of sanctions and administrative penalties under this article.

Sec. 5. JUDICIAL REVIEW. (a) A person, including a physician or provider, affected by an order of the commissioner regarding a violation of this article may file an appeal in district court. The standard of review under this subsection is substantial evidence.

(b) If the commissioner fails to make a determination of a complaint within the time limit prescribed by Subsection (c) of Section 4 of this article, the person who initiated the complaint may bring an action in district court for a violation of this article. The action must be commenced within 12 months after the date on which the time limit for the commissioner's determination expired.

(c) In a suit filed under Subsection (b) of this section, a court may impose the same or similar sanctions as provided under Section 4(a) of this article, including an additional civil penalty of \$25,000 if the trier of fact finds that the defendant knowingly violated the provisions of this article. In addition, if the claimant prevails in the action, the court may award reasonable attorney's fees and court costs, including any reasonable and necessary expert witness fees.

(d) On a finding by the court that an action under Subsection (b) of this section was groundless and brought in bad faith or brought for the purpose of harassment, the court shall award the defendant reasonable and necessary attorney's fees.

The amendment was read.

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

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 8** 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 Cain, Chair; Sibley, Nelson, Van de Putte, and Zaffirini.

SENATE BILL 1434 WITH HOUSE AMENDMENT

Senator Ogden called **SB 1434** 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 1434** as follows:

- (1) On page 3, strike lines 1 and 2;
- (2) On page 3, line 5, add "and" following "₁";
- (3) On page 3, line 6, strike "₂" and substitute "₁";
- (4) On page 3, strike lines 7 through 14;
- (5) On page 3, strike lines 22 through 26;
- (6) On page 4, strike lines 1 through 5;
- (7) On page 4, line 11, strike "may" and substitute "shall";
- (8) On page 5, line 8, add "and" following "₁";
- (9) On page 5, line 9, strike "₂" and substitute "₁";
- (10) On page 5, strike lines 10 through 22;
- (11) On page 6, line 20, strike "magistrate's findings, conclusions";
- (12) On page 6, line 24, strike "findings" and substitute "orders, recommendations or other action taken";
- (13) On page 7, line 9, strike "findings and conclusions" and substitute "orders of or recommendations or other actions taken by"; and,
- (14) On page 7, line 10, strike "findings and conclusions" and substitute "orders of or recommendations or other actions taken which are".

The amendment was read.

Senator Ogden moved to concur in the House amendment to **SB 1434**.

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

Present-not voting: Mr. President.

SENATE BILL 1821 WITH HOUSE AMENDMENTS

Senator Staples called **SB 1821** 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 1821** as follows:

On page 2, line 17, strike the ", " after the word "Code" and insert a "₁". Strike the remainder of subsection (b) beginning on line 17 and ending on line 26 and insert the following:

"The district may determine that a transfer of groundwater produced within the district's boundaries for use outside the district's boundaries will not be considered a transfer outside the district if:

(1) the transfer is for use as a potable water supply by a retail public utility as defined by Section 13.002, Water Code, and is within an authorized service area of which an appropriate portion, as determined by the district, is located inside the district's boundaries;

(2) or the transfer involves an emergency potable water interconnect between retail public utilities, as defined by Section 13.002, Water Code."

Committee Amendment No. 2

Amend **SB 1821** as follows:

On page 3, line 3, strike subsection (d) in its entirety and insert the following:
"The board of directors of the district:

(a) May set fees for administrative acts of the district, such as filing applications. Fees set by a district may not unreasonably exceed the cost to the district of performing the administrative function for which the fee is charged.

(b) Shall set and collect fees for all services provided outside the boundaries of the district. The fees may not unreasonably exceed the cost to the district of providing the services outside the district.

(c) May assess production fees based on the amount of water authorized by permit to be withdrawn from a well or the amount actually withdrawn. A district may assess the fees in lieu of, or in conjunction with, any taxes otherwise levied by the district. A district may use revenues generated by the fees for any lawful purpose. Production fees shall not exceed:

(1) \$1 per acre-foot payable annually for water used for agricultural use; or

(2) \$10 per acre-foot payable annually for water used for any other purpose.

(d) May assess a production fee under (c) for any water produced under an exemption under Section 36.117, Water Code, if that water is subsequently sold to another person."

The amendments were read.

Senator Staples moved to concur in the House amendments to **SB 1821**.

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 25, 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 317, Recalling H.B. No. 3038 from the governor.

SCR 70, Requesting the return of Senate Bill 1672 from the Governor.

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

HB 2845 (viva-voce vote)
HB 2847 (viva-voce vote)
HB 2855 (viva-voce vote)
HB 2870 (140 Ayes, 0 Nays, 2 Present Not Voting)
HB 2877 (138 Ayes, 0 Nays, 2 Present Not Voting)
HB 3006 (viva-voce vote)
HB 3037 (114 Ayes, 0 Nays, 2 Present Not Voting)
HB 3068 (viva-voce vote)
HB 3069 (122 Ayes, 0 Nays, 1 Present Not Voting)
HB 3076 (viva-voce vote)
HB 3088 (114 Ayes, 0 Nays, 1 Present Not Voting)
HB 3136 (viva-voce vote)
HB 3152 (112 Ayes, 0 Nays, 2 Present Not Voting)
HB 3172 (112 Ayes, 0 Nays, 2 Present Not Voting)
HB 3181 (viva-voce vote)
HB 3194 (112 Ayes, 0 Nays, 2 Present Not Voting)
HB 3195 (115 Ayes, 0 Nays, 2 Present Not Voting)
HB 3209 (viva-voce vote)
HB 3243 (viva-voce vote)
HB 3312 (viva-voce vote)
HB 3315 (viva-voce vote)
HB 3323 (viva-voce vote)
HB 3329 (viva-voce vote)
HB 3383 (viva-voce vote)
HB 3404 (105 Ayes, 0 Nays, 2 Present Not Voting)
HB 3441 (viva-voce vote)
HB 3451 (106 Ayes, 0 Nays, 1 Present Not Voting)
HB 3458 (viva-voce vote)
HB 3544 (103 Ayes, 0 Nays, 1 Present Not Voting)
HB 3586 (100 Ayes, 0 Nays, 1 Present Not Voting)
HB 3587 (viva-voce vote)
HB 3591 (viva-voce vote)
HB 3600 (110 Ayes, 0 Nays, 1 Present Not Voting)
HB 3639 (viva-voce vote)
HB 3647 (106 Ayes, 0 Nays, 1 Present Not Voting)
HB 3651 (viva-voce vote)
HB 3652 (viva-voce vote)
HB 3655 (viva-voce vote)

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

HB 2932

House Conferees: Lewis, Glenn - Chair/Hill/Hinojosa/Keel/Seaman

HB 3016

House Conferees: Haggerty - Chair/Allen/Hill/Hupp/Solomons

HB 3244

House Conferees: Gallego - Chair/Eiland/Glaze/Goodman/Heflin

HB 3305

House Conferees: Martinez Fischer - Chair/Danburg/Denny/Gallego/Madden

HB 3348

House Conferees: Counts - Chair/Chisum/Crownover, Myra/Hawley/Merritt

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE ON HOUSE BILL 2684

Senator Armbrister 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 2684** and moved that the request be granted.

The motion prevailed.

The Presiding Officer, Senator Sibley in Chair, asked if there were any motions to instruct the conference committee on **HB 2684** 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 Armbrister, Chair; Bernsen, Cain, Lucio, and Truan.

SENATE RESOLUTION 1209

Senator Armbrister 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. 1119, relating to the regulation of bail bond sureties and providing a penalty, to consider and take action on the following specific matters:

Senate Rule 12.03(1) is suspended to permit the committee to amend proposed Section 1704.163(a), Occupations Code, to change text not in disagreement to read as follows:

(a) Except as provided by this section [~~Subsection (c)~~], a person not licensed under this chapter may execute a bail bond or act as a surety for another person in any county in this state if the person:

(1) is licensed to practice law in this state; and

(2) represents the other person in the [a] criminal case for which the bond was given.

Explanation: The change is necessary to clarify how attorneys are exempted from Chapter 1704, Occupations 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 1315 WITH HOUSE AMENDMENT

Senator Staples called **SB 1315** 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 1315** in SECTION 2, in new Section 351.101(a)(6), Tax Code, between "(6)" and "expenses" (house committee printing, page 2, line 11), by inserting, "for a municipality located in a county with a population of 65,000 or less,".

The amendment was read.

Senator Staples moved to concur in the House amendment to **SB 1315**.

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

Present-not voting: Mr. President.

(President in Chair)**SENATE JOINT RESOLUTION 49 WITH HOUSE AMENDMENT**

Senator Armbrister called **SJR 49** 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.

Floor Amendment No. 1

Amend **SJR 49**, in SECTION 1, in added Section 46, Article III, Texas Constitution, after Subsection (c) (house committee report, page 1, between lines 19 and 20), by inserting a new Subsection (d) to read as follows:

(d) A fee to which this section applies may take effect on a date before the next January 1 after the regular session at which the bill adopting the fee was enacted only if the bill is passed by a record vote of two-thirds of all the members elected to each house of the legislature on final consideration in each house.

The amendment was read.

Senator Armbrister moved to concur in the House amendment to **SJR 49**.

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

Present-not voting: Mr. President.

CONFERENCE COMMITTEE ON HOUSE BILL 3572

Senator Lindsay 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 3572** 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 3572** 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 Lindsay, Chair; Moncrief, Nelson, Fraser, and Zaffirini.

CONFERENCE COMMITTEE ON HOUSE BILL 1784

Senator Ogden 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 1784** 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 1784** 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 Ogden, Chair; Duncan, Sibley, Armbrister, and Bernsen.

SENATE BILL 173 WITH HOUSE AMENDMENT

Senator Wentworth, on behalf of Senator Carona, called **SB 173** 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 173** as follows:

(1) In SECTION 1 of the bill, in proposed Article 17.02, Code of Criminal Procedure (House Committee Report, page 1, line 13), between "same" and the period, insert ". A court or magistrate may not authorize a defendant or any person acting on behalf of the defendant to deposit cash in an amount less than the full amount of the bail that has been set by the court or magistrate".

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

SECTION _____. Article 17.03(a), Code of Criminal Procedure, is amended to read as follows:

(a) Except as provided by Subsection (b) of this article, a magistrate may, in the magistrate's discretion, release the defendant on his personal bond. A court or magistrate may not require the deposit of money or any other security as a condition of release on personal bond [~~without sureties or other security~~].

The amendment was read.

Senator Wentworth, on behalf of Senator Carona, 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 173** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Carona, Chair; Sibley, Moncrief, Ogden, and Duncan.

SENATE BILL 1458 WITH HOUSE AMENDMENTS

Senator Duncan called **SB 1458** 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 1458** (House committee printing) as follows:

(1) In Article 1, in the heading (page 1, line 7), strike "OFFICE".

(2) In Section 1.01 of the bill, after added Subchapter A, Chapter 2055, Government Code (page 2, between lines 12 and 13), insert:

Sec. 2055.003. SUNSET PROVISION. The office is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2005.

(3) In Section 1.01 of the bill, in added Section 2055.057, Government Code (page 4, line 25, through page 5, line 1), strike: "The office shall submit the model for approval by the governor and adoption by the department as a rule."

(4) In Section 1.01 of the bill, strike added Section 2055.057(b), Government Code (page 5, lines 2 through 6), and substitute:

(b) The department may include in its appropriations request a proposal for funding projects selected under Section 2055.101.

(5) In Section 1.01 of the bill, strike added Sections 2055.104 and 2055.105, Government Code (page 7, line 7, through page 8, line 26), and renumber the sections of added Subchapter C, Chapter 2055, Government Code, accordingly.

(6) In Section 1.01 of the bill, in added Subchapter C, Chapter 2055, Government Code, after added Section 2055.107, Government Code (page 10, between lines 23 and 24), insert an appropriately numbered section:

Sec. 2055. . . . LEGISLATIVE OVERSIGHT COMMITTEE. (a) The Legislative Oversight Committee for Electronic Government Projects is created to oversee the establishment of electronic government projects by the office and state agencies.

(b) The speaker of the house of representatives and the lieutenant governor shall appoint the members of the committee and assign duties as appropriate.

(c) The committee is abolished and this section expires December 31, 2004.

(7) In Section 1.01 of the bill, strike added Subchapter D, Chapter 2055, Government Code (page 10, line 25, through page 14, line 9), and redesignate the remaining subchapters and sections of Chapter 2055, Government Code, and correct the cross-references to those sections, accordingly.

(8) In Section 1.01 of the bill, strike added Section 2055.204, Government Code (page 16, line 17, through page 17, line 8).

(9) In Sections 1.02 through 1.07 of the bill, correct the cross-references to the sections in added Chapter 2055, Government Code, accordingly.

(10) In Section 1.02 of the bill, in amended Section 2054.055(b)(5), Government Code (page 17, line 25), after "resources," insert "and".

(11) In Section 1.02 of the bill, in amended Section 2054.055(b), Government Code (page 18, lines 8 through 10), strike "; and

(7) include appropriate information from the report prepared under Section 2055.204".

(12) In Section 1.04 of the bill (page 18, line 19), strike "Subchapter D, Chapter 2055" and substitute "Section 2055.106".

(13) In Section 1.04 of the bill (page 18, lines 20 and 21), strike "as provided under Section 2055.153, Government Code, as added by this article" and substitute "under that section".

(14) In Section 1.06 of the bill (page 19, line 4), strike "2055.057, 2055.101, 2055.102, and 2055.105" and substitute "2055.101 and 2055.102".

(15) In Article 1 of the bill, after Section 1.07 (page 19, between lines 15 and 16), insert:

SECTION 1.08. FUNDING DATE. Section 2055.101(c), Government Code, as added by this article, applies only to projects to be funded after September 1, 2003.

(16) Strike Article 2 of the bill (page 19, line 16, through page 23, line 24) and renumber the articles and sections of the bill accordingly.

(17) In Section 3.02 of the bill, in added Section 2054.113(b), Government Code (page 27, line 3), insert after the period:

In this subsection, "infrastructure" does not include the development of applications, and the supporting platform, for electronic government projects.

(18) In Section 3.03 of the bill, in added Subchapter J, Chapter 2054, Government Code, strike added Section 2054.301, Government Code (page 27, lines 8 through 10), and renumber the sections of Subchapter J, Chapter 2054, Government Code, accordingly.

(19) In Section 3.03 of the bill, in added Section 2054.303(2), Government Code (page 27, lines 17 and 18), strike ", with input from the oversight committee.".

(20) In Section 3.03 of the bill, in added Section 2054.303(3), Government Code (page 27, lines 21 and 22), strike ", in coordination with the oversight committee.".

(21) In Section 3.03 of the bill, in added Subchapter J, Chapter 2054, Government Code, strike added Section 2054.304, Government Code (page 28, lines 3 through 26), and renumber the sections of Subchapter J, Chapter 2054, Government Code, accordingly.

(22) In Section 3.03 of the bill, in added Section 2054.305, Government Code (page 29, line 3), strike "oversight committee" and substitute "department".

(23) In Section 3.03 of the bill, in added Section 2054.306, Government Code (page 29, line 9), strike "oversight committee" and substitute "department".

(24) In Article 3 of the bill (page 30, lines 7 through 11), strike Section 3.05 of the bill.

(25) In Section 4.01 of the bill, strike added Sections 2177.0001(1), (2), (4), and (6), Government Code (page 30, lines 16 through 25, page 31, lines 2 through 4, and page 31, lines 8 and 9), and renumber the subdivisions of added Section 2177.0001, Government Code, accordingly.

(26) In Section 4.01 of the bill, in added Section 2177.0001, Government Code (page 31, between lines 1 and 2), insert an appropriately numbered subdivision:

() "Political subdivision" includes a school district.

(27) Strike Sections 4.02 through 4.05 of the bill (page 31, line 10, through page 39, line 24) and renumber the sections of the article accordingly.

(28) In Section 4.06 of the bill, in added Section 2177.005, Government Code (page 40, line 3), strike "procurement".

(29) Strike Articles 5 through 8 of the bill (page 40, line 5, through page 48, line 1) and renumber the articles and sections of the bill accordingly.

(30) In Article 9 of the bill, after Section 9.03 (page 50, between lines 4 and 5), insert the following appropriately numbered sections:

SECTION _____. TEXASONLINE DIVISION. Subchapter I, Chapter 2054, Government Code, as added by Senate Bill 187, Acts of the 77th Legislature, Regular Session, 2001, is amended by adding Section 2054.2645 to read as follows:

Sec. 2054.2645. SUNSET PROVISION. The division is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the division is abolished September 1, 2005.

SECTION _____. ELECTRONIC GRANTS MANAGEMENT SYSTEM. (a) The Department of Information Resources shall study the costs and benefits of establishing an electronic grants management system for state grant programs.

(b) The Department of Information Resources may develop a plan for, and implement, an electronic grants management system for programs that would receive the greatest benefit from the system.

SECTION _____. SPECIFICATIONS FOR ELECTRONIC DATA CLEARINGHOUSE. Not later than January 1, 2003, the Department of Information Resources, in coordination with the comptroller of public accounts and other state agencies, local governments, federal agencies, the Texas Conference of Urban Counties, the Texas Association of Counties, and the Texas Municipal League, shall develop specifications, including procedures and implementation methods, for a statewide electronic data clearinghouse. The Department of Information Resources shall identify ways to streamline and reduce reporting requirements on counties and municipalities, when practical, through implementation of the clearinghouse.

Floor Amendment No. 1 on Third Reading

Amend **SB 1458** on third reading (House Committee printing) by inserting the following new sections of the bill, appropriately numbered, and renumbering the subsequent sections of the bill accordingly:

SECTION _____. Section 552.104, Government Code, is amended to read as follows:

Sec. 552.104. EXCEPTION: INFORMATION RELATED TO COMPETITION OR BIDDING. (a) Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

(b) The requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under this section.

SECTION _____. Section 552.131, Government Code, as added by Chapter 405, Acts of the 76th Legislature, Regular Session, 1999, is amended by adding Subsection (d) to read as follows:

(d) The requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under this section.

SECTION _____. The change in law made in Sections 552.104, and 552.131, Government Code, in this Act applies to information in the possession of a governmental body or to which the governmental body has a right of access on or after the effective date of this Act, without regard to the date on which the governmental body first possessed or first obtained a right of access to the information.

Floor Amendment No. 2 on Third Reading

Amend **SB 1458** on third reading by adding an appropriately numbered article to the bill to read as follows:

ARTICLE _____. TRANSFER OF DATA PROCESSING EQUIPMENT TO STUDENTS

SECTION _____.01. Chapter 32, Education Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. TRANSFER OF DATA PROCESSING EQUIPMENT TO STUDENTS

Sec. 32.101. DEFINITION. In this subchapter, "data processing" has the meaning assigned by Section 2054.003, Government Code.

Sec. 32.102. AUTHORITY. (a) As provided by this subchapter, a school district or open-enrollment charter school may transfer to a student enrolled in the district or school:

(1) any data processing equipment donated to the district or school, including equipment donated by:

(A) a private donor; or

(B) a state eleemosynary institution or a state agency under Section 2175.126, Government Code;

(2) any equipment purchased by the district or school, to the extent consistent with Section 32.105; and

(3) any surplus or salvage equipment owned by the district or school.

(b) A school district or open-enrollment charter school may accept:

(1) donations of data processing equipment for transfer under this subchapter; and

(2) any gifts, grants, or donations of money or services to purchase, refurbish, or repair data processing equipment under this subchapter.

Sec. 32.103. ELIGIBILITY; PREFERENCE. (a) A student is eligible to receive data processing equipment under this subchapter only if the student does not otherwise have home access to data processing equipment, as determined by the student's school district or open-enrollment charter school.

(b) In transferring data processing equipment to students, a school district or open-enrollment charter school shall give preference to educationally disadvantaged students.

Sec. 32.104. REQUIREMENTS FOR TRANSFER. Before transferring data processing equipment to a student, a school district or open-enrollment charter school must:

(1) adopt rules governing transfers under this subchapter, including provisions for technical assistance to the student by the district or school;

(2) determine that the transfer serves a public purpose and benefits the district or school; and

(3) remove from the equipment any offensive, confidential, or proprietary information, as determined by the district or school.

Sec. 32.105. EXPENDITURE OF PUBLIC FUNDS. A school district or open-enrollment charter school may spend public funds to:

(1) purchase, refurbish, or repair any data processing equipment transferred to a student under this subchapter; and

(2) store, transport, or transfer data processing equipment under this subchapter.

Sec. 32.106. RETURN OF EQUIPMENT. (a) Except as provided by Subsection (b), a student who receives data processing equipment from a school district or open-enrollment charter school under this subchapter shall return the equipment to the district or school not later than the earliest of:

(1) five years after the date the student receives the equipment;

(2) the date the student graduates;

(3) the date the student transfers to another school district or open-enrollment charter school; or

(4) the date the student withdraws from school.

(b) Subsection (a) does not apply if, at the time the student is required to return the data processing equipment under that subsection, the district or school determines that the equipment has no marketable value.

SECTION _____.02. Section 2175.126, Government Code, is amended to read as follows:

Sec. 2175.126. DISPOSITION OF DATA PROCESSING EQUIPMENT. (a) If a disposition of a state agency's surplus or salvage data processing equipment is not made under this subchapter, the state agency shall transfer the equipment to a school district or open-enrollment charter school in this state under Subchapter C, Chapter 32, Education Code, or to the Texas Department of Criminal Justice. The state agency may not collect a fee or other reimbursement from the district, the school, or the Texas Department of Criminal Justice for the surplus or salvage data processing equipment.

(b) If a disposition of the surplus or salvage data processing equipment of a state eleemosynary institution or an institution or agency of higher education is not made under other law, the institution or agency shall transfer the equipment to a school district or open-enrollment charter school in this state under Subchapter C, Chapter 32, Education Code, or to the Texas Department of Criminal Justice. The institution or agency may not collect a fee or other reimbursement from the district, the school, or the Texas Department of Criminal Justice for the surplus or salvage data processing equipment.

Floor Amendment No. 3 on Third Reading

Amend **SB 1458** on third reading by adding a new SECTION and renumbering subsequent SECTIONS appropriately to read as follows:

SECTION _____. (a) Subchapter F, Chapter 2054, Government Code, is amended by adding Section 2054.111 to read as follows:

Sec. 2054.111. REQUIRED POSTING OF STATE INVESTMENT FUND INFORMATION ON INTERNET. (a) In this section, "state investment fund" means any investment fund administered by or under a contract with any entity of state government, including a fund:

(1) established by statute or by the Texas Constitution; or

(2) administered by or under a contract with:

(A) a public retirement system, as defined by Section 802.001, that provides service retirement, disability retirement, or death benefits for officers or employees of the state;

(B) an institution of higher education, as defined by Section 61.003, Education Code; or

(C) any other entity that is part of state government.

(b) The entity of state government responsible for administering a state investment fund shall, on or before the 60th day following the last day of each calendar quarter, post a report containing the information specified by Subsection (c) for the previous calendar quarter on a generally accessible Internet site maintained by or for the fund.

(c) The report must state:

(1) all purchases and sales by or for the fund of domestic equity securities and bonds in the following summary form:

(A) company name;

(B) total amount of shares traded;

(C) total commissions paid; and

(D) the ratio of the amount of the commissions to the number of shares;

(2) the fund's investment managers, investment custodians, investment performance measurement consultants, securities lending agents, and any other ancillary consultants in the following summary form:

(A) company name;

(B) average fund assets under management;

(C) fees paid by the fund; and

(D) average basis points that fees paid by the fund represent in relation to the average assets of the fund under management; and

(3) for categories of businesses based on the status of each business as a historically underutilized business:

(A) the dollar amounts of fees, commissions, and other amounts paid in connection with the administration of the fund, as described under Subdivisions (1) and (2), to those businesses; and

(B) the percentage of commissions paid by the fund to those businesses in relation to the total commissions paid by the fund, as described by Subdivision (1).

(d) This section does not apply to the Texas Workers' Compensation Insurance Fund created under Article 5.76-3, Insurance Code.

(b) This section takes effect July 1, 2001, 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 effect on that date, this section takes effect October 1, 2001.

Floor Amendment No. 4 on Third Reading

Amend **SB 1458** on third reading by inserting the following:

SECTION _____. Section 2260.003(a), Government Code, is amended to read as follows:

(a) The total amount of money recoverable on a claim for breach of contract under this chapter may not, after deducting the amount specified in Subsection (b), exceed an amount equal to the sum of:

(1) the balance due and owing on the contract price; and

(2) the amount or fair market value of orders or requests [~~-, including orders~~] for additional work made by a unit of state government to the extent that the orders or requests for additional work were actually performed.

SECTION _____. Section 2260.005, Government Code, is amended to read as follows:

Sec. 2260.005. EXCLUSIVE PROCEDURE. Subject to Section 2260.007, the [~~The~~] procedures contained in this chapter are exclusive and required prerequisites to suit in accordance with Chapter 107, Civil Practice and Remedies Code.

SECTION _____. Subchapter A, Chapter 2260, Government Code, is amended by adding Section 2260.007 to read as follows:

Sec. 2260.007. LEGISLATIVE PERMISSION TO SUE. (a) Notwithstanding Section 2260.005, the legislature retains the authority to deny or grant a waiver of immunity to suit against a unit of state government by statute, resolution, or any other means the legislature may determine appropriate.

(b) This chapter does not and may not be interpreted to:

(1) divest the legislature of the authority to grant permission to sue a unit of state government on the terms, conditions, and procedures that the legislature may specify in the measure granting the permission;

(2) require that the legislature, in granting or denying permission to sue a unit of state government, comply with this chapter; or

(3) limit in any way the effect of a legislative grant of permission to sue a unit of state government unless the grant itself provides that this chapter may have that effect.

SECTION _____. (a) This Act applies only to a contract executed on or after the effective date of this Act. A contract executed before the effective date of this Act is governed by the law applicable to the contract immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Floor Amendment No. 6 on Third Reading

Amend **SB 1458** on third reading by inserting a new SECTION to read as follows and renumber subsequent SECTIONS appropriately:

SECTION _____. Subchapter B, Chapter 472, Transportation Code, is amended by adding Section 472.015 to read as follows:

Sec. 472.015. CONTRACTS FOR REMOVAL OF PROPERTY. In contracting with a private business or businesses for the removal of personal property from the right-of-way or roadway of the state highway system, the department may:

(1) use a purchasing method described in Chapter 2156, Government Code;

(2) include the removal work in a contract entered into under Chapter 223; or

(3) select a business or businesses based on an evaluation of the experience of the business and the price and quality of the business's equipment and services.

The amendments were read.

Senator Duncan 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 1458** 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 Duncan, Chair; Armbrister, Ellis, Harris, and Ogden.

SENATE RESOLUTION 1201

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 No. 1057, relating to the administration of the TEXAS grant program and to the dissemination of student financial aid information, to consider and take action on the following specific matter:

Senate Rule 12.03(4) is suspended to permit the committee to add text that is not included in either the House or Senate version of the bill to read as follows:

SECTION 3. Section 56.309, Education Code, is redesignated as Subchapter O, Chapter 56, Education Code, and amended to read as follows:

SUBCHAPTER O. TEACH FOR TEXAS FINANCIAL ASSISTANCE PROGRAM

Sec. 56.351. DEFINITIONS. In this subchapter:

(1) "Coordinating board" means the Texas Higher Education Coordinating Board.

(2) "Eligible institution of higher education" means:

(A) an institution of higher education; or

(B) a private or independent institution of higher education as defined by Section 61.003.

Sec. 56.352 [56.309]. PURPOSE OF [TEACH FOR TEXAS GRANT] PROGRAM. [(a)] The purpose of this subchapter [the Teach for Texas grant program] is to attract to the teaching profession persons who have expressed interest in teaching and to support the certification of those persons as classroom teachers by providing a grant on the condition that the recipient serve as a classroom teacher in the public schools of this state for a specified period.

Sec. 56.353. ELIGIBILITY FOR GRANT; TEACHING AGREEMENT. (a) [(b)] A Teach for Texas [tuition] grant is available only to a person who [receives a TEXAS grant under Section 56.304 or 56.305;] applies for a [Teach for Texas tuition] grant[;] and;

- (1) is seeking educator certification;
- (2) is enrolled in an eligible institution of higher education in this state:
- (A) as a junior or senior in a baccalaureate degree program; or
- (B) in the person's first academic year in an educator certification program after receiving a baccalaureate degree;
- (3) makes satisfactory progress toward completion of the person's educator certification program; and
- (4) satisfies one of the following [if]:
- (A) the person is seeking educator certification [~~(1) the degree program~~ is] in a teaching field certified by the commissioner of education as experiencing a critical shortage of teachers in this state in the year in which the person receives the grant and agrees to teach full-time for five years at the preschool, primary, or secondary level in a public school in this state in that teaching field [~~begins the degree program~~]; or
- (B) [~~(2)~~] the person agrees to teach full-time for five years at the preschool, primary, or secondary level in a public school in this state in a community, which is not required to be specifically designated at the time the person receives the grant, certified by the commissioner of education as experiencing a critical shortage of teachers in any year in which the person receives a grant under this subchapter [section] or in any subsequent year in which the person fulfills the teaching obligation.
- (b) The coordinating board in awarding Teach for Texas grants shall give priority to applicants who demonstrate financial need.
- (c) If the money available for grants in a period for which grants are awarded exceeds the amount needed to provide grants to all eligible applicants described by Subsection (b), the coordinating board shall award grants from the remaining money to additional eligible applicants. The coordinating board shall prescribe by rule the eligibility requirements for these applicants based on the factors that the coordinating board considers appropriate to further the purposes of this subchapter.
- (d) If the money available for grants in a period for which grants are awarded is insufficient to provide grants to all eligible applicants described by Subsection (b), the coordinating board shall give the highest priority to applicants who demonstrate the greatest financial need.
- (e) A person may not receive a Teach for Texas tuition grant for more than three academic years or the equivalent.
- (f) A person is not eligible to receive a Teach for Texas grant if the person has been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of another jurisdiction involving a controlled substance, as defined by Chapter 481, Health and Safety Code, unless the person has met the other applicable eligibility requirements under this subchapter and has:
- (1) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or
- (2) been pardoned, had the record of the offense expunged from the person's record, or otherwise has been released from the resulting ineligibility to receive a grant under this subchapter.
- (g) For the purpose of this section, a person makes satisfactory academic progress toward completion of an educator certification program if the person:

(1) completes at least 75 percent of the semester credit hours attempted in the student's most recent academic year; and

(2) earns an overall grade point average of at least 2.5 on a four-point scale or the equivalent on coursework previously attempted at institutions of higher education.

Sec. 56.354. AMOUNT OF GRANT; PAYMENT OF GRANT. (a) The amount of a Teach for Texas grant is equal to four times the current amount of a TEXAS grant under Subchapter M for a student enrolled in a general academic teaching institution [To receive a Teach for Texas tuition grant, a person must agree to teach full-time for five years at the preschool, primary, or secondary level in a public school in this state in the person's chosen critical field or in a community experiencing a critical teacher shortage, as applicable].

(b) [~~(d)~~] The coordinating board shall pay the amount of a Teach for Texas [tuition] grant in installments, with a substantially equal amount paid in each semester or term based on the number of semesters in which a typical full-time student would complete the recipient's educator certification program. The coordinating board may adjust the amount of a grant for a semester or term, or award a supplemental grant, to ensure that a grant recipient who completes the educator certification program receives the total amount of the recipient's grant [under this section is equal to two times the amount of a TEXAS grant authorized under Section 56.307(b) for the same semester or term].

Sec. 56.355. ELIGIBILITY FOR TEXAS GRANT NOT AFFECTED. A person may receive both a TEXAS grant under Subchapter M [Section 56.304 or 56.305] and a Teach for Texas grant under this subchapter [section] for the same semester or term.

Sec. 56.356. SATISFYING TEACHING OBLIGATION; REPAYMENT. (a) A person who receives a Teach for Texas grant [~~(e) The person~~] must begin fulfilling the teaching obligation of the person's grant [this section] not later than the 18th month after the person completes the educator certification program for which the person received the grant [degree program and any related courses required for teacher certification], unless the coordinating board grants the person additional time to begin fulfilling the teaching obligation.

(b) The person must complete the teaching obligation not later than the sixth year after the date the person begins to fulfill the teaching obligation. The coordinating board shall grant a person additional time to complete the teaching obligation for good cause.

(c) [~~(f)~~] The coordinating board shall cancel a person's teaching obligation if the board determines that the person:

(1) has become permanently disabled so that the person is not able to teach; or

(2) has died.

(d) [~~(g)~~] The coordinating board shall require a person who receives a Teach for Texas grant [under this section] to sign a promissory note acknowledging the conditional nature of the grant and promising to repay the outstanding amount of the grant plus applicable interest and reasonable collection costs if the person does not satisfy the applicable conditions. The board shall determine the terms of the promissory note.

(e) [~~(h)~~] The amount required to be repaid by a person who fails to complete the teaching obligation of the person's grant shall be determined in proportion to the portion of the total teaching obligation that the person has not satisfied.

(f) [(†)] A person receiving a Teach for Texas [tuition] grant is considered to have failed to satisfy the conditions of the grant, and the grant automatically becomes a loan, if the person fails to remain enrolled in or to make steady progress in the person's educator certification program and, if applicable, the person's baccalaureate degree program for which the grant was made without good cause as determined by the coordinating board or if the person fails to become certified as a teacher not later than the 18th month after the date the person completes the educator certification program [receives a degree].

Sec. 56.357. TEACH FOR TEXAS ALTERNATIVE CERTIFICATION ASSISTANCE PROGRAM. (a) The coordinating board shall establish a program under which the coordinating board awards grants to assist persons seeking educator certification through alternative educator certification programs as provided by this section.

(b) To be eligible for a grant under the program, a person must apply for a grant and:

(1) have received a baccalaureate degree from an eligible institution of higher education or an accredited out-of-state institution of higher education; and

(2) enroll in an alternative educator certification program described by Section 21.049 and satisfy either of the following conditions:

(A) be seeking educator certification in a teaching field certified by the commissioner of education as experiencing a critical shortage of teachers in this state in the year in which the person receives the grant and agree to teach for five years in a public school in this state in that teaching field; or

(B) agree to teach for five years in a public school in this state in a community, which is not required to be specifically designated at the time the person receives the grant, certified by the commissioner of education as experiencing a critical shortage of teachers in any year in which the person receives a grant under this section or in any subsequent year in which the person fulfills the teaching obligation.

(c) A person is not eligible to receive a grant under the program if the person has been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of another jurisdiction involving a controlled substance, as defined by Chapter 481, Health and Safety Code, unless the person has met the other applicable eligibility requirements under this section and has:

(1) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or

(2) been pardoned, had the record of the offense expunged from the person's record, or otherwise has been released from the resulting ineligibility to receive a grant under the program.

(d) In selecting applicants to receive grants under the program, the coordinating board shall consider:

(1) the financial resources of an applicant;

(2) the efficient use of the money available for grants;

(3) the opportunity of applicants from all regions of this state to receive grants; and

(4) any other factor the coordinating board considers appropriate to further the purposes of this subchapter.

(e) The amount of a grant under the program is equal to two times the current amount of a TEXAS grant under Subchapter M for a student enrolled in a general academic teaching institution. The coordinating board may pay the amount of the grant in installments during the period in which the person is enrolled in the person's alternative educator certification program.

(f) The person must begin fulfilling the person's teaching obligation not later than the 18th month after the person completes the alternative educator certification program, unless the coordinating board for good cause grants the person additional time to begin fulfilling the teaching obligation. The person must complete the teaching obligation not later than the sixth year after the date the person begins to fulfill the teaching obligation. The coordinating board shall grant a person additional time to complete the teaching obligation for good cause.

(g) The coordinating board shall cancel a person's teaching obligation if the coordinating board determines that the person:

(1) has become permanently disabled so that the person is not able to teach; or

(2) has died.

(h) The coordinating board shall require a person who receives a grant to sign a promissory note acknowledging the conditional nature of the grant and promising to repay the amount of the grant plus applicable interest and reasonable collection costs if the person does not satisfy the applicable conditions of the grant. The coordinating board shall determine the terms of the promissory note.

(i) The amount required to be repaid by a person who fails to complete the teaching obligation of the person's grant shall be determined in proportion to the portion of the teaching obligation that the person has not satisfied.

(j) A person receiving a grant is considered to have failed to satisfy the conditions of the grant, and the grant automatically becomes a loan, if the person, without good cause as determined by the coordinating board, fails to:

(1) remain enrolled in or to make steady progress in the alternative educator certification program for which the grant was made or, with the approval of the coordinating board, in another alternative educator certification program; or

(2) become certified as a classroom teacher not later than the 18th month after the date the person completes the alternative educator certification program.

Sec. 56.358. FUNDING; ALLOCATION OF FUNDING. (a) The coordinating board may solicit and accept gifts and grants from any public or private source for the purposes of this subchapter.

(b) The legislature may appropriate money for the purposes of this subchapter.

SECTION 4. The heading to Subchapter M, Chapter 56, Education Code, as added by Chapter 1590, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

SUBCHAPTER M. TOWARD EXCELLENCE, ACCESS,
& SUCCESS (TEXAS) GRANT PROGRAM
[AND TEACH FOR TEXAS GRANT PROGRAM]

SECTION 5. Subsection (b), Section 56.308, Education Code, is amended to read as follows:

(b) Each school district shall:

(1) notify its middle school students, junior high school students, and high school students, those students' teachers and counselors, and those students' parents of

the TEXAS grant and Teach for Texas grant programs [~~established under this subchapter~~], the eligibility requirements of each program, the need for students to make informed curriculum choices to be prepared for success beyond high school, and sources of information on higher education admissions and financial aid in a manner that assists the district in implementing a strategy adopted by the district under Section 11.252(a)(4); and

(2) ensure that each student's official transcript or diploma indicates whether the student has completed or is on schedule to complete:

(A) the recommended or advanced high school curriculum required for grant eligibility under Section 28.002 or 28.025; or

(B) for a school district covered by Section 56.304(f)(1), the required portion of the recommended or advanced high school curriculum in the manner described by Section 56.304(f)(2).

SECTION 6. Section 56.311, Education Code, is amended to read as follows:

Sec. 56.311. LEGISLATIVE OVERSIGHT COMMITTEE. (a) The Legislative Oversight Committee on the TEXAS grant program and Teach for Texas grant program [~~programs established by this subchapter~~] is composed of six members as follows:

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

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

(b) The committee shall:

(1) meet at least twice a year with the coordinating board; and

(2) receive information regarding rules relating to the TEXAS grant program and Teach for Texas grant program [~~programs established by this subchapter~~] that have been adopted by the coordinating board or proposed for adoption by the coordinating board.

(c) The committee may request reports and other information from the coordinating board relating to the operation of the TEXAS grant program and Teach for Texas grant program [~~programs under this subchapter~~] by the coordinating board.

(d) The committee shall review the specific recommendations for legislation related to this subchapter that are proposed by the coordinating board.

(e) The committee shall monitor the operation of the TEXAS grant program and Teach for Texas grant program [~~programs established under this subchapter~~], with emphasis on the manner of the award of grants, the number of grants awarded, and the educational progress made by persons who have received grants under those programs [~~this subchapter~~].

(f) The committee shall file a report with the governor, lieutenant governor, and speaker of the house of representatives not later than December 31 of each even-numbered year.

(g) The report shall include identification of any problems in the TEXAS grant program and Teach for Texas grant program [~~programs operated under this subchapter~~] with recommended solutions for the coordinating board and for legislative action.

SECTION 7. Subsection (a), Section 11.252, Education Code, is amended to read as follows:

(a) Each school district shall have a district improvement plan that is developed, evaluated, and revised annually, in accordance with district policy, by the

superintendent with the assistance of the district-level committee established under Section 11.251. The purpose of the district improvement plan is to guide district and campus staff in the improvement of student performance for all student groups in order to attain state standards in respect to the academic excellence indicators adopted under Section 39.051. The district improvement plan must include provisions for:

(1) a comprehensive needs assessment addressing district student performance on the academic excellence indicators, and other appropriate measures of performance, that are disaggregated by all student groups served by the district, including categories of ethnicity, socioeconomic status, sex, and populations served by special programs, including students in special education programs under Subchapter A, Chapter 29;

(2) measurable district performance objectives for all appropriate academic excellence indicators for all student populations, including students in special education programs under Subchapter A, Chapter 29, and other measures of student performance that may be identified through the comprehensive needs assessment;

(3) strategies for improvement of student performance that include:

(A) instructional methods for addressing the needs of student groups not achieving their full potential;

(B) methods for addressing the needs of students for special programs, such as suicide prevention, conflict resolution, violence prevention, or dyslexia treatment programs;

(C) dropout reduction;

(D) integration of technology in instructional and administrative programs;

(E) discipline management;

(F) staff development for professional staff of the district;

(G) career education to assist students in developing the knowledge, skills, and competencies necessary for a broad range of career opportunities; and

(H) accelerated education;

(4) strategies for providing to middle school, junior high school, and high school students, those students' teachers and counselors, and those students' parents information about:

(A) higher education admissions and financial aid opportunities;

(B) the TEXAS grant program and the Teach for Texas grant program established under [Subchapter M,] Chapter 56;

(C) the need for students to make informed curriculum choices to be prepared for success beyond high school; and

(D) sources of information on higher education admissions and financial aid;

(5) resources needed to implement identified strategies;

(6) staff responsible for ensuring the accomplishment of each strategy;

(7) timelines for ongoing monitoring of the implementation of each improvement strategy; and

(8) formative evaluation criteria for determining periodically whether strategies are resulting in intended improvement of student performance.

SECTION 8. Subchapter M, Chapter 61, Education Code, is amended by amending Section 61.702 and adding Section 61.7021 to read as follows:

Sec. 61.702. ELIGIBILITY FOR CLASSROOM TEACHER REPAYMENT ASSISTANCE. (a) To be eligible to receive repayment assistance for classroom teachers, a person must apply to the board and must ~~have~~:

(1) ~~have~~ completed at least one year of employment as ~~[and be employed as]~~ a full-time classroom teacher at the preschool, primary, or secondary level in a public school in ~~[the elementary or secondary schools of]~~ this state in an area or field of acute teacher shortage as designated by the commissioner of education ~~[State Board of Education]~~; and

(2) be employed as a full-time classroom teacher at the preschool, primary, or secondary level in a public school in this state in an area or field described by Subdivision (1).

(b) A person is not eligible for repayment assistance for classroom teachers under this subchapter if the person has received a Teach for Texas grant or other financial assistance under Subchapter O, Chapter 56, or under former Section 56.309.

(c) The board shall give priority in granting repayment assistance for classroom teachers to a person who received repayment assistance for classroom teachers for the preceding school year. The priority terminates if the person does not apply for or is not eligible for that assistance. In extraordinary circumstances, the board may allow a person to maintain the priority after one or more years in which the person is unable to teach as a classroom teacher.

Sec. 61.7021. ELIGIBILITY FOR BORDER INSTITUTION FACULTY REPAYMENT ASSISTANCE. To be eligible to receive repayment assistance for border institution faculty, a person must apply to the board and must:

(1) have ~~or~~

~~[(2)]~~ received a doctoral degree not earlier than September 1, 1994, from a public or private institution of higher education accredited as required by the board; and

(2) be employed as a full-time faculty member with instructional duties in an institution of higher education located in a county that borders the United Mexican States.

SECTION 9. Section 61.705, Education Code, is amended by amending Subsection (c) and adding Subsections (d) and (e) to read as follows:

(c) The minimum amount of repayment assistance that may be awarded in one year to a person who qualifies for the assistance under Section 61.702 is the lesser of:

(1) \$1,000; or

(2) the amount of principal and accrued interest that is due on eligible loans in that year.

(d) A person may not receive repayment assistance for classroom teachers under this subchapter in a total amount that exceeds \$5,000, and may not receive that repayment assistance for more than five years.

(e) The minimum amount of repayment assistance that may be awarded ~~[received]~~ in one year ~~to [by]~~ a person who qualifies for the assistance under ~~[described by]~~ Section ~~61.7021~~ ~~[61.702(2)]~~ is 50 percent of the amount of principal and accrued interest that is due on eligible loans that year.

SECTION 10. Subsection (a), Section 61.708, Education Code, is amended to read as follows:

(a) The board shall adopt rules necessary for the administration of this subchapter, including[-

~~[(1) a rule that sets a minimum or maximum amount of repayment assistance that may be received in one year by a person described by Section 61.702(1); and~~
~~[(2) a rule that sets a maximum amount of repayment assistance that may be received in one year by a person who qualifies for the assistance under Section 61.7021 described by Section 61.702(2)].~~

SECTION 11.

(b) The Texas Higher Education Coordinating Board shall implement the changes made by this Act to the Teach for Texas grant program and to the classroom teacher loan repayment assistance program under Subchapter M, Chapter 61, Education Code, as soon as practicable after the effective date of this Act, but not later than the 2002-2003 academic year.

(c) The Texas Higher Education Coordinating Board shall adopt initial rules for awarding grants and shall award grants under the Teach for Texas alternative certification assistance program established under Section 56.357, Education Code, as added by this Act, as soon as practicable.

Explanation: These additions are necessary to provide appropriate financial aid and other incentives for persons to complete the educational requirements for educator certification, by revising the Teach for Texas grant program and applying the program to alternative educator certification programs, by revising the classroom teacher loan repayment assistance program, and by making appropriate conforming changes to the law.

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 1323

Senator Staples 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 1323** 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 1323** 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 Staples, Chair; Armbrister, Fraser, Shapiro, and Van de Putte.

SENATE BILL 1128 WITH HOUSE AMENDMENT

Senator Bernsen called **SB 1128** 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 1128** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to landscaping and billboards along highways; imposing a civil penalty.

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

SECTION 1. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.614 to read as follows:

Sec. 201.614. DESIGN CONSIDERATIONS. (a) The department shall consider the following factors when developing transportation projects that involve the construction, reconstruction, rehabilitation, or resurfacing of a highway, other than a maintenance resurfacing project:

(1) the extent to which the project promotes safety;

(2) the durability of the project;

(3) the economy of maintenance of the project;

(4) the impact of the project on:

(A) the natural and artificial environment;

(B) the scenic and aesthetic character of the area in which the project is

located;

(C) preservation efforts; and

(D) each affected local community and its economy; and

(5) the access for other modes of transportation, including those that promote physically active communities.

(b) The commission shall adopt rules to implement this section.

SECTION 2. Subchapter I, Chapter 201, Transportation Code, is amended by adding Section 201.708 to read as follows:

Sec. 201.708. LANDSCAPING EXPENDITURES. (a) The department shall spend not less than \$6 million annually for the installation and maintenance, for functional and aesthetic design purposes, of highway landscape improvements, including:

(1) indigenous or adapted vegetation suitable for the climate in which it will be located;

(2) native stone;

(3) landscape pavers;

(4) other related materials; or

(5) other items necessary to establish or support landscape plantings.

(b) The department shall make reasonable efforts to spend more than the amount specified in Subsection (a) for landscape improvements.

(c) The department may not install or maintain landscape improvements under this section that will obscure a lawfully erected off-premise sign, as defined by Section 394.001.

(d) The department may accept gifts, grants, and contributions from private and other sources for the purposes of this section. The use of gifts and grants is subject only to limitations contained in the gift or grant.

SECTION 3. The heading to Chapter 391, Transportation Code, is amended to read as follows:

**CHAPTER 391. HIGHWAY BEAUTIFICATION ON INTERSTATE
AND PRIMARY SYSTEMS AND CERTAIN ROADS**

SECTION 4. Chapter 391, Transportation Code, is amended by adding Subchapter I to read as follows:

**SUBCHAPTER I. PROHIBITION OF SIGNS
ON CERTAIN HIGHWAYS**

Sec. 391.251. DEFINITIONS. In this subchapter:

(1) "Off-premise sign" means an outdoor sign displaying advertising that pertains to a business, person, organization, activity, event, place, service, or product

not principally located or primarily manufactured or sold on the premises on which the sign is located.

(2) "Advertising" means a message seeking to attract the public or to direct the attention of the public to any goods, services, or merchandise.

Sec. 391.252. OFF-PREMISE SIGNS PROHIBITED. (a) Subsequent to the effective date of this act, a person may not erect an off-premise sign that is adjacent to and visible from:

(1) U.S. Highway 290 between the western city limits of the city of Austin and the eastern city limits of the city of Fredericksburg;

(2) State Highway 317 between the northern city limits of the city of Belton to the southern city limits of the city of Valley Mills;

(3) State Highway 16 between the northern city limits of the city of Kerrville and Interstate Highway 20;

(4) U.S. Highway 77 between State Highway 186 and State Highway 44;

(5) U.S. Highway 281 between State Highway 186 and Interstate Highway 37;

(6) State Highway 17 between State Highway 118 and U.S. Highway 90;

(7) State Highway 67 between U.S. Highway 90 and Farm-to-Market Road 170;

(8) Farm-to-Market Road 170 between State Highway 67 and State Highway 118;

(9) State Highway 118 between Farm-to-Market Road 170 and State Highway 17;

(10) State Highway 105 between the western city limits of the city of Sour Lake to the eastern city limits of the city of Cleveland;

(11) State Highway 73 between the eastern city limits of the city of Winnie to the western city limits of the city of Port Arthur;

(12) State Highway 21 between the southern city limits of the city of College Station and U.S. Highway 290; or

(13) a highway located in:

(A) the Sabine National Forest;

(B) the Davy Crockett National Forest; or

(C) the Sam Houston National Forest.

(b) This section shall not affect the ability of a municipality to regulate a sign located on the portion of a roadway listed in subsection (a) that is within the corporate limits or extraterritorial jurisdiction of the municipality in accordance with Chapter 216, Local Government Code.

(c) This section does not prohibit a person from erecting an off-premise sign permitted by other law, rule, or regulation that is adjacent to and visible from a roadway not listed in Section 391.252 if the intended purpose of the sign is to create visibility limited to such roadway.

Sec. 391.253. REERECTION, RECONSTRUCTION, REPAIR, OR REBUILDING OF OFF-PREMISE SIGNS. (a) An off-premise sign that is visible from a highway listed in Section 391.252 that is blown down, destroyed, taken down, or removed for a purpose other than maintenance or to change a letter, symbol, or other matter on the sign may be reerected, reconstructed, repaired, or rebuilt only if the cost of reerecting, reconstructing, repairing, or rebuilding the sign is not more

than 60 percent of the cost of erecting a new off-premise sign of the same size, type, and construction at the same location.

(b) The department shall permit the relocation of an off-premise sign adjacent to and visible from a highway listed in Section 391.252 to another location that is adjacent to and visible from the same highway if:

(1) the construction, reconstruction, or expansion of a highway requires the removal of the sign;

(2) the sign is not modified to increase the above-grade height, the area of each sign face, the dimensions of the sign face, the number of sign faces, or the illumination of the sign; and

(3) the department provides an alternate site for the relocation of the sign adjacent to and visible from the highway listed in Section 391.252.

(c) For purposes of this section, the department shall specify, within thirty days of receipt of a request for a relocation site, a minimum of three alternate sites for an off-premise sign to be reerected, reconstructed, repaired, or rebuilt adjacent to and visible from a highway listed in Section 391.252.

(d) The owner of an off-premise sign that is reerected, reconstructed, repaired, or rebuilt according to Subsection (a) or relocated according to Subsection (b) may alter the materials and design of the sign to reduce the number of upright supports, subject to other restrictions in this section, in a manner that meets or exceeds the pre-existing structural specifications of the sign.

Sec. 391.254. CIVIL PENALTY. (a) A person who violates Section 391.252 is liable to the state for a civil penalty of not less than \$500 or more than \$1,000 for each violation, depending on the seriousness of the violation. A separate penalty may be imposed for each day a continuing violation occurs.

(b) The attorney general, the district or county attorney for the county, or the municipal attorney of the municipality in which the violation is alleged to have occurred may bring suit to collect the penalty.

(c) A civil penalty collected by the attorney general under this section shall be deposited to the credit of the state highway fund and may be used only for a purpose described by Section 201.708.

(d) Before a suit may be brought for a violation of Section 391.252, the attorney general, the district or county attorney for the county, or the municipal attorney of the municipality in which the violation is alleged to have occurred shall give the owner of the off-premise sign a written notice that:

(1) describes the violation and specific location of the sign found to be in violation;

(2) states the amount of the proposed penalty for the violation; and

(3) gives the owner 30 days from receipt to remove the sign and cure the violation to avoid the penalty unless the sign owner was given notice and opportunity to cure a similar violation within the preceding 12 months.

Sec. 391.255. SCENIC BYWAYS PROGRAM. The Texas Department of Transportation shall study current regulations affecting billboards in this state, including vegetation control regulations, and the feasibility of adopting a scenic byways program in accordance with 23 U.S.C. Section 162. The department shall report the findings of the study to the 78th Legislature not later than January 1, 2003.

Sec. 391.256. APPLICABILITY OF SUBCHAPTER. The restrictions imposed by this subchapter are in addition to those imposed by the remainder of this chapter.

SECTION 5. This Act takes effect September 1, 2001.

The amendment was read.

Senator Bernsen 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 1128** 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 Bernsen, Chair; West, Cain, Shapiro, and Whitmire.

(Senator Truan in Chair)

CONFERENCE COMMITTEE ON HOUSE BILL 1925

Senator Staples 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 1925** 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 1925** 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 Staples, Chair; Armbrister, Bernsen, Jackson, and Bivins.

(President in Chair)

SENATE BILL 638 WITH HOUSE AMENDMENTS

Senator Barrientos called **SB 638** 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 638** (House Committee Printing) in SECTION 7 of the bill, in added Article 102.056(e), Code of Criminal Procedure, as follows:

(1) On page 8, line 14, strike "grants to local law enforcement agencies performing duties" and substitute "reimbursement in the form of grant to local law enforcement agencies for expenses incurred in performing duties".

(2) On page 8, line 16, immediately after the period, add the following: On the first day after the end of a calendar quarter, a law enforcement agency incurring expenses described by this subsection in the previous calendar quarter

shall send a certified statement of the costs incurred to the criminal justice division. The criminal justice division through a grant shall reimburse the law enforcement agency for the costs not later than the 30th day after the date the certified statement is received. If the criminal justice division does not reimburse the law enforcement agency before the 90th day after the date the certified statement is received, the agency is not required to perform duties imposed under Sections 411.1471 and 411.1472 until the agency has been compensated for all costs for which the local law enforcement agency has submitted a certified statement under this subsection.

Floor Amendment No. 2

Amend **SB 638** as follows:

(1) Strike SECTION 11 and substitute the following:

SECTION 11. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2001.

(b) The section of this Act that amends Sections 411.148 and 411.150, Government Code, takes effect January 1, 2002.

(2) Add an appropriately numbered SECTION to read as follows and renumber existing SECTIONS accordingly:

SECTION _____. (a) Section 411.148(a), Government Code, is amended to read as follows:

(a) An inmate serving a sentence for a felony in [o]f the institutional division [~~or other penal institution~~] shall provide one or more blood samples or other specimens [~~taken by or at the request of the institutional division~~] for the purpose of creating a DNA record, except for an inmate serving a sentence for an offense under Section 25.09, Penal Code, or Section 481.121, Health and Safety Code [~~if the inmate is ordered by a court to give the sample or specimen or is serving a sentence for:~~

~~[(1) an offense:~~

~~[(A) under Section 19.02, Penal Code (murder), or Section 22.02, Penal Code (aggravated assault);~~

~~[(B) under Section 30.02, Penal Code (burglary), if the offense is punishable under Subsection (c)(2) or (d) of that section; or~~

~~[(C) for which the inmate is required to register as a sex offender under Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997; or~~

~~[(2) any offense if the inmate has previously been convicted of or adjudicated as having engaged in:~~

~~[(A) an offense described in Subsection (a)(1); or~~

~~[(B) an offense under federal law or laws of another state that involves the same conduct as an offense described by Subsection (a)(1)].~~

(b) Section 411.148, Government Code, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding Subsection (a), if at the beginning of a fiscal year the executive director of the Texas Department of Criminal Justice determines that sufficient funds have not been appropriated to the department to obtain a sample from each inmate otherwise required to provide a sample under Subsection (a), the executive director shall direct the institutional division to give priority to obtaining samples from inmates ordered by a court to give the sample or specimen or serving sentences for:

(1) an offense:

(A) under Section 19.02, Penal Code (murder), or Section 22.02, Penal Code (aggravated assault);

(B) under Section 30.02, Penal Code (burglary), if the offense is punishable under Subsection (c)(2) or (d) of that section; or

(C) for which the inmate is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or

(2) any offense if the inmate has previously been convicted of or adjudicated as having engaged in:

(A) an offense described in Subdivision (1); or

(B) an offense under federal law or laws of another state that involves the same conduct as an offense described by Subdivision (1).

(c) Section 411.150(a), Government Code, is amended to read as follows:

(a) A juvenile who is committed to the Texas Youth Commission shall provide one or more blood samples or other specimens ~~[taken by or at the request of the commission]~~ for the purpose of creating a DNA record if the juvenile ~~[is ordered by a juvenile court to give the sample or specimen or]~~ is committed to the commission for an adjudication as having engaged in delinquent conduct that violates a penal law of the grade of felony[:

~~[(1) an offense:~~

~~[(A) under Section 19.02, Penal Code (murder), or Section 22.02, Penal Code (aggravated assault);~~

~~[(B) under Section 30.02, Penal Code (burglary), if the offense is punishable under Subsection (c)(2) or (d) of that section; or~~

~~[(C) for which the juvenile is required to register as a sex offender under Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997; or~~

~~[(2) a penal law if the juvenile has previously been convicted of or adjudicated as having engaged in:~~

~~[(A) a violation of a penal law described in Subsection (a)(1); or~~

~~[(B) a violation of a penal law under federal law or the laws of another state that involves the same conduct as a violation of a penal law described by Subsection (a)(1)].~~

(d) Section 411.150, Government Code, is amended by adding Subsection (g) to read as follows:

(g) Notwithstanding Subsection (a), if at the beginning of a fiscal year the executive director of the Texas Youth Commission determines that sufficient funds have not been appropriated to the commission to obtain a sample from each juvenile otherwise required to provide a sample under Subsection (a), the executive director shall direct the commission to give priority to obtaining samples from juveniles ordered by a court to give the sample or specimen or committed to the commission for an adjudication as having engaged in delinquent conduct that violates:

(1) an offense:

(A) under Section 19.02, Penal Code (murder), or Section 22.02, Penal Code (aggravated assault);

(B) under Section 30.02, Penal Code (burglary), if the offense is punishable under Subsection (c)(2) or (d) of that section; or

(C) for which the juvenile is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or

(2) a penal law if the juvenile has previously been convicted of or adjudicated as having engaged in:

(A) a violation of a penal law described in Subdivision (1); or

(B) a violation of a penal law under federal law or laws of another state that involves the same conduct as an offense described by Subdivision (1).

(e) The change in law made by this section to Section 411.148(a), Government Code, applies only to an inmate who begins serving a sentence in the institutional division of the Texas Department of Criminal Justice on or after the effective date of this section.

(f) The change in law made by this section to Section 411.150(a), Government Code, applies only to a juvenile committed to the Texas Youth Commission on or after the effective date of this section.

Floor Amendment No. 3

Amend **SB 638** by inserting the following appropriately numbered SECTION and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter G, Chapter 411, Government Code, is amended by adding Section 411.155 to read as follows:

Sec. 411.155. CERTAIN RESTRICTIONS ON USE. A DNA sample or specimen may be obtained under this subchapter only for the purpose of identification.

Floor Amendment No. 1 on Third Reading

Amend **SB 638** on third reading as follows:

(1) Strike the SECTION of the bill amending Section 411.155, Government Code, as added on 2nd Reading by Amendment No. 3 (Garcia).

(2) Strike the SECTION of the bill amending Sections 411.148 and 411.150, Government Code, as added on 2nd Reading by Amendment No. 2 (Allen).

(3) Strike SECTION 11 of the bill as substituted on 2nd Reading by Amendment No. 2 (Allen) and substitute the following:

SECTION 11. This Act takes effect September 1, 2001.

The amendments were read.

On motion of Senator Barrientos, the Senate concurred in the House amendments to **SB 638** by a viva voce vote.

BILLS SIGNED

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

HB 223, HB 310, HB 400, HB 460, HB 598, HB 623, HB 631, HB 835, HB 877, HB 1001, HB 1004, HB 1024, HB 1121, HB 1127, HB 1138.

GUESTS PRESENTED

Senator Staples was recognized and introduced to the Senate members of the Wildcats Band of Palestine High School in Palestine, accompanied by their director and sponsors.

The Senate welcomed its guests.

MOTION TO ADJOURN

On motion of Senator Truan, the Senate at 5:03 p.m. agreed to adjourn, in memory of Raul L. Longoria of the Rio Grande Valley, upon receipt of Messages from the House and the appointment of conference committees, until 10:00 a.m. tomorrow.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 25, 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 318, Instructing the enrolling clerk of the house to make technical corrections to House Bill No. 2735.

HCR 319, Commemorating the quasiquicentennial of the Texas Constitution.

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

HB 45 (viva-voce vote)

HB 266 (116 Ayes, 0 Nays, 1 Present Not Voting)

HB 553 (viva-voce vote)

HB 1168 (viva-voce vote)

HB 1689 (viva-voce vote)

HB 1838 (viva-voce vote)

HB 1883 (viva-voce vote)

HB 1902 (viva-voce vote)

HB 1921 (viva-voce vote)

HB 2263 (116 Ayes, 0 Nays, 1 Present Not Voting)

HB 2310 (viva-voce vote)

HB 2432 (113 Ayes, 0 Nays, 1 Present Not Voting)

HB 2648 (viva-voce vote)

HB 2686 (viva-voce vote)

HB 2810 (viva-voce vote)

HB 3081 (viva-voce vote)

HB 3473 (viva-voce vote)

HB 3665 (viva-voce vote)

HB 3673 (viva-voce vote)

HB 3675 (viva-voce vote)

HB 3692 (112 Ayes, 0 Nays, 1 Present Not Voting)

HB 3696 (viva-voce vote)

HB 3699 (110 Ayes, 0 Nays, 1 Present Not Voting)

HJR 5 (112 Ayes, 0 Nays, 1 Present Not Voting)

HJR 82 (110 Ayes, 0 Nays, 1 Present Not Voting)

HJR 85 (114 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 660

House Conferees: Seaman - Chair/Keffer/Luna, Vilma/Yarbrough/Zbranek

HB 1148

House Conferees: Cook - Chair/Hardcastle/Keffer/Ramsay/Ritter

HB 2061

House Conferees: Wilson - Chair/Giddings/Goolsby/Luna, Vilma/Olivo

HB 2146

House Conferees: Chisum - Chair/Allen/Crownover, Myra/Haggerty/Smithee

HB 2890

House Conferees: McClendon - Chair/Hinojosa/Keel/Kitchen/Naishtat

HB 2914

House Conferees: Bonnen - Chair/Bosse/Chisum/Oliveira/Ritter

HB 3452

House Conferees: Gallego - Chair/Bosse/Keffer/Luna, Vilma/Solis, Jim

HB 3578

House Conferees: Villarreal, Mike - Chair/Coleman/Martinez Fischer/Maxey/Naishtat

HJR 81

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

HB 3171 (viva-voce vote)

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

SB 11

House Conferees: Gray - Chair/Capelo/Kitchen/Maxey/McCall

SB 248

House Conferees: Brimer - Chair/Davis, Yvonne/Junell/McCall/Oliveira

SB 309

House Conferees: Bosse - Chair/Chisum/Gallego/Gray/McCall

SB 311

House Conferees: Gallego - Chair/Bosse/Heflin/McCall/Wolens

SB 317

House Conferees: McCall - Chair/Averitt/Bosse/Chisum/Turner, Sylvester

SB 515

House Conferees: Truitt - Chair/Hinojosa/Hope/Kitchen/Smith

SB 896

House Conferees: Hamric - Chair/Hardcastle/Keffer/Ramsay/Turner, Bob

SB 1057

House Conferees: Rangel - Chair/Coleman/Goolsby/Morrison/Uher

SB 1173

House Conferees: Hilderbran - Chair/Averitt/King, Tracy/Nixon, Joe/Pitts

SB 1783

House Conferees: Wolens - Chair/Bailey/Counts/Dutton/Hawley

THE HOUSE HAS DISCHARGED ITS CONFEREES AND CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 1869 (viva-voce vote)

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE ON HOUSE BILL 259

Senator Ambrister 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 259** 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 259** 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 Armbrister, Chair; Sibley, Bernsen, Cain, and Van de Putte.

CONFERENCE COMMITTEE ON HOUSE BILL 2572

Senator Staples 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 2572** 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 2572** 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 Staples, Chair; Haywood, Bernsen, Bivins, and Lucio.

CONFERENCE COMMITTEE ON HOUSE BILL 1839

Senator Ellis 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 1839** 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 1839** 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 Ellis, Chair; Duncan, Shapiro, Ogden, and Armbrister.

CONFERENCE COMMITTEE ON HOUSE BILL 2585

Senator Shapleigh 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 2585** 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 2585** 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 Shapleigh, Chair; Armbrister, Carona, Madla, and Bernsen.

CONFERENCE COMMITTEE ON HOUSE BILL 2204

Senator Moncrief 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 2204** 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 2204** 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 Moncrief, Chair; Shapiro, Carona, Truan, and Shapleigh.

CONFERENCE COMMITTEE ON HOUSE BILL 3305

Senator Van de Putte 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 3305** 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 3305** 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 Van de Putte, Chair; Madla, Gallegos, Shapiro, and Lindsay.

MESSAGE FROM THE HOUSE**HOUSE CHAMBER**

Austin, Texas

May 25, 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 GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

SB 8

House Conferees: Farabee - Chair/Goodman/Gray/Smithee/Thompson

SB 173

House Conferees: Hinojosa - Chair/Dunnam/Garcia/Keel/Shields

SB 409

House Conferees: Bosse - Chair/Alexander/Davis, Yvonne/Gallego/McCall

SB 527

House Conferees: Naishtat - Chair/Chavez/Madden/Noriega/Williams

SB 886

House Conferees: Gallego - Chair/Hamric/Pickett/Swinford/Talton

SB 1128

House Conferees: Coleman - Chair/Davis, Yvonne/Edwards/Hawley/Swinford

SB 1458

House Conferees: McCall - Chair/Grusendorf/Hunter/Rangel/Telford

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 536**

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 **SB 536** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ELLIS	DUTTON
ARMBRISTER	CLARK
WHITMIRE	BOSSE
BIVINS	HOPE
OGDEN	JANEK
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to compensation to persons wrongfully imprisoned.

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

SECTION 1. Chapter 103, Civil Practice and Remedies Code, is amended to read as follows:

CHAPTER 103. COMPENSATION TO PERSONS
WRONGFULLY IMPRISONED
SUBCHAPTER A. ELIGIBILITY AND
CHOICE OF COMPENSATION METHOD

Sec. 103.001. CLAIMANTS ENTITLED TO COMPENSATION. (a) A person is entitled to compensation if [~~the person~~]:

(1) the person has served in whole or in part a sentence in prison under the laws of this state;

~~[(2) pleaded "not guilty" to the charge for which he was convicted and that led to the imprisonment;~~

~~[(3) is not guilty of the crime for which he was sentenced;] and~~

(2) the person:

(A) [~~(4)~~] has received a full pardon on the basis of innocence for the crime [~~and punishment~~] for which the person [~~he~~] was sentenced; or

(B) has been granted relief on the basis of actual innocence of the crime for which the person was sentenced.

(b) A person is not entitled to compensation under Subsection (a) for any part of a sentence in prison during which the person was also serving a concurrent sentence for another crime to which Subsection (a) does not apply.

Sec. 103.002. CHOICE OF COMPENSATION METHOD. A person entitled to compensation under Section 103.001 may proceed by following the provisions for administratively awarded compensation under Subchapter B or by filing suit under Subchapter C, but a person may not seek compensation under both Subchapters B and C.

Sec. 103.003. LIMITATION ON TIME TO FILE. Not later than the third anniversary of the date the person received the pardon or was found not guilty as required by Section 103.001, a person seeking compensation under this chapter must:

(1) file an application with the comptroller for compensation under Subchapter B; or

(2) file suit against the state for compensation under Subchapter C.

SUBCHAPTER B. ADMINISTRATIVE PROCEEDING

Sec. 103.051. APPLICATION PROCEDURE. (a) To apply for compensation under this subchapter, the claimant must file with the judicial section of the comptroller's office:

(1) an application for compensation provided for that purpose by the comptroller;

(2) a verified copy of the pardon or court order justifying the application for compensation; and

(3) a statement provided by the Texas Department of Criminal Justice verifying the length of incarceration.

(b) The comptroller shall determine:

(1) the eligibility of the claimant; and

(2) the amount of compensation owed to an eligible claimant.

(c) The comptroller must make a determination of eligibility and the amount owed as required by Subsection (b) not later than the 45th day after the date the application is received.

(d) If the comptroller denies the claim, the comptroller must state the reason for the denial. Not later than the 10th day after the date the denial is received, the claimant must submit an application to cure any problem identified. Not later than the 45th day after the date an application is received under this subsection, the comptroller shall determine the claimant's eligibility and the amount owed.

(e) If the comptroller denies a claim after the claimant submits an application under Subsection (d), the claimant may bring an action for mandamus relief.

Sec. 103.052. AMOUNT AND TIMING OF COMPENSATION. (a) A person who meets the requirements of Section 103.001 is entitled to compensation in an amount equal to:

(1) \$25,000 multiplied by the number of years served in prison, expressed as a fraction to reflect partial years, if the time served is less than 20 years; or

(2) \$500,000 if the time served is 20 years or more.

(b) A person who is owed an amount of compensation equal to or greater than \$50,000 shall be paid in two equal annual installments.

(c) If requested by the claimant, the Texas Department of Mental Health and Mental Retardation shall provide appropriate counseling for one year to the claimant at a mutually agreed-on location at no charge to the claimant.

SUBCHAPTER C. FILING SUIT

Sec. 103.101 [103.002]. WAIVER OF IMMUNITY; FILING SUIT. (a) A person may bring a suit against the state under this subchapter [chapter], and the state's immunity from the suit is waived.

(b) The suit must be initiated by a verified petition alleging that the petitioner is entitled to compensation.

(c) The suit shall be brought in a court of competent jurisdiction either in the county of the petitioner's [his] residence at the time the suit is commenced or in Travis County.

(d) Citation must be served on the state by serving the attorney general. The attorney general shall represent the state in the proceeding.

Sec. 103.102 [~~103.003~~]. STANDARD OF PROOF. The petitioner must establish by a preponderance of the evidence that the petitioner [he] is entitled to compensation and the amount of compensation to which the petitioner [he] is entitled.

Sec. 103.103 [~~103.004~~]. INSUFFICIENT STATE DEFENSES. The following are not defenses to an action brought under this chapter:

(1) the judgment of conviction in the trial that resulted in the claimant's imprisonment; or

(2) an indictment, information, complaint, or other formal accusation.

Sec. 103.104 [~~103.005~~]. ADMISSIBLE EVIDENCE. (a) In the suit, the court may admit as evidence the record of the trial at which the petitioner was convicted and the pardon or proclamation issued to the petitioner [him] by the governor.

(b) The court may also admit all court papers, orders, docket notations, or other writings of record in any court in this state as proof of the facts set forth in the writings.

Sec. 103.105 [~~103.006~~]. DAMAGES. (a) If the trier of fact finds that the petitioner is entitled to compensation, the petitioner is entitled to:

(1) expenses incurred by the petitioner in connection with all associated criminal proceedings and appeals and in connection with obtaining the petitioner's discharge from imprisonment, including any fine or court costs paid and reasonable attorney's fees, including reasonable attorney's fees for prosecuting the lawsuit under this subchapter;

(2) wages, salary, or other earned income that was lost as a direct result of the arrest, prosecution, conviction, or wrongful imprisonment; and

(3) medical and counseling expenses incurred by the petitioner as a direct result of the arrest, prosecution, conviction, or wrongful imprisonment.

(b) In determining the sum of money owed to the petitioner, the trier of fact may not deduct any expenses incurred by the state or any of its political subdivisions in connection with the arrest, prosecution, conviction, and wrongful imprisonment of the petitioner, including expenses for food, clothing, shelter, and medical services.

(c) [If the jury or the judge in a nonjury trial finds that the claimant is entitled to compensation, the jury or judge shall assess damages to compensate the claimant fairly and reasonably for:

[(1) physical and mental pain and suffering sustained by him as a proximate result of the erroneous conviction or imprisonment from the time of the conviction by the trial court; and

[(2) all reasonable and necessary medical expenses incurred by him as a proximate result of the erroneous conviction or imprisonment from the time of the conviction by the trial court.

[(b) Damages assessed for physical and mental pain and suffering may not exceed \$25,000;] Total damages assessed under this subchapter [chapter] may not exceed \$500,000 [~~\$50,000~~].

SUBCHAPTER D. PAYMENTS AND LIMITATIONS

Sec. 103.151. ADMINISTRATIVE PAYMENT OF COMPENSATION. (a) The comptroller shall make the first installment payment due an applicant under Subchapter B, to the extent that funds are available and appropriated for that purpose, not later than the 30th day after the date the comptroller grants the application.

(b) The comptroller shall pay the amount of the second installment payment on the first anniversary of the date of the first installment.

(c) If appropriated funds are insufficient to pay the amount due an applicant, money shall be paid under the procedure described by Section 103.152.

Sec. 103.152. PAYMENT OF COMPENSATION. (a) Not later than November 1 of each even-numbered year, the comptroller shall provide a list of claimants entitled to payment under Subchapter B or C and the amounts due for each claimant to the governor, the lieutenant governor, and the chair of the appropriate committee in each house of the legislature so that the legislature may appropriate the amount needed to pay each claimant the amount owed.

(b) Not later than September 1 of the year in which an appropriation under this chapter has been made by the legislature, the comptroller shall pay the required amount to each claimant.

Sec. 103.153. EMPLOYEES NOT LIABLE AFTER PAYMENT OF COMPENSATION. (a) In this section, "employee" and "governmental unit" have the meanings assigned by Section 101.001.

(b) A person who receives compensation under this chapter may not bring any action involving the same subject matter, including an action involving the person's arrest, conviction, or length of confinement, against any governmental unit or an employee of any governmental unit.

Sec. 103.154. TERMINATION OF PAYMENTS. (a) Compensation payments to a person under this chapter terminate if, after the date the person becomes eligible for compensation under Section 103.001, the person is convicted of a crime punishable as a felony. Compensation payments terminate under this subsection on the date of the subsequent conviction.

(b) Compensation payments to a person under this chapter terminate on the date of the person's death. Any payments scheduled to be paid after that date are credited to the state and may not be paid to any other person, including the person's surviving spouse, heirs, devisees, or beneficiaries under the person's will, or to the person's estate.

[Sec. 103.007. LIMITATION OF ACTION. (a) A person who claims compensation for a sentence served in whole or in part after August 30, 1965, must bring the action within two years after:

[(1) the person ceased serving the sentence of imprisonment;

[(2) the person was released from custody; or

[(3) the person discovered or should have discovered the evidence substantiating his innocence.

[(b) A person who claims compensation for a sentence served before August 30, 1965, must bring the action within two years after he discovered or should have discovered the evidence substantiating his innocence.]

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.

SECTION 3. (a) A person who has not received compensation under Chapter 103, Civil Practice and Remedies Code, as it existed before the effective date of this Act, including a person who has brought a suit under that chapter but whose suit has not been settled or finally adjudicated, may, subject to Section 103.003, Civil Practice and Remedies Code, as added by this Act, file an application for compensation under Subchapter B, Chapter 103, Civil Practice and Remedies Code, as added by this Act.

(b) A person may not obtain compensation under both Chapter 103, Civil Practice and Remedies Code, as it existed before the effective date of this Act, and Chapter 103, Civil Practice and Remedies Code, as amended by this Act.

SECTION 4. (a) Except as provided by Subsection (c) of this section, Subchapters A, C, and D, Chapter 103, Civil Practice and Remedies Code, as amended by this Act, apply to all actions:

(1) commenced on or after the effective date of this Act; or

(2) pending on that effective date and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, begins on or after that effective date.

(b) In an action commenced before the effective date of this Act, a trial, new trial, or retrial that is in progress on the effective date is governed by the law applicable to the trial, new trial, or retrial immediately before the effective date, and that law is continued in effect for that purpose.

(c) This section does not apply to a person who elects to file an application for compensation under Subchapter B, Chapter 103, Civil Practice and Remedies 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 Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 115**

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 115** 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
SIBLEY
VAN DE PUTTE

HAWLEY
COOK
B. TURNER
HOMER
RAMSAY

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to creating a foundation to finance health programs in the rural areas of the state.

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

SECTION 1. Subtitle E, Title 2, Health and Safety Code, is amended by adding Chapter 110 to read as follows:

CHAPTER 110. RURAL FOUNDATION

Sec. 110.001. CREATION OF FOUNDATION. (a) The Center for Rural Health Initiatives shall establish the Rural Foundation as a nonprofit corporation that complies with the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), except as otherwise provided by this chapter, and qualifies as an organization exempt from federal income tax under Section 501(c)(3), Internal Revenue Code of 1986, as amended.

(b) The Center for Rural Health Initiatives shall ensure that the Rural Foundation operates independently of any state agency or political subdivision of the state.

Sec. 110.002. POWERS AND DUTIES. (a) The Rural Foundation shall raise money from foundations, governmental entities, and other sources to finance health programs in the rural areas of the state.

(b) The Rural Foundation shall have the powers that are necessary and convenient to carry out its duties.

(c) The Rural Foundation shall develop and implement policies and procedures that clearly separate the responsibilities and activities of the foundation from the Center for Rural Health Initiatives.

Sec. 110.003. BOARD OF DIRECTORS. (a) The Rural Foundation is governed by a board of five directors appointed by the executive committee of the Center for Rural Health Initiatives from individuals recommended by the executive director of the Center for Rural Health Initiatives.

(b) Members of the board of directors of the Rural Foundation serve for staggered terms of six years, with as near as possible to one-third of the members' terms expiring February 1 of each odd-numbered year.

(c) Appointments to the board of directors of the Rural Foundation shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(d) The board of directors of the Rural Foundation shall ensure that the foundation remains eligible for an exemption from federal income tax under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt organization under Section 501(c)(3) of that code, as amended.

Sec. 110.004. RESTRICTIONS ON BOARD APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

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

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(c) A person may not be a member of the board of directors of the Rural Foundation or act as the general counsel to the board of directors or the foundation 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 foundation.

Sec. 110.005. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board of directors of the Rural Foundation that a member:

(1) is ineligible for membership under Section 110.004;

(2) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(3) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board of directors.

(b) The validity of an action of the board of directors of the Rural Foundation is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director of the Center for Rural Health Initiatives has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of directors of the Rural Foundation of the potential ground. The presiding officer shall then notify the governor and the attorney

general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board of directors, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Sec. 110.006. VACANCY. A vacancy on the board of directors of the Rural Foundation shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

Sec. 110.007. OFFICERS. The board of directors of the Rural Foundation shall elect from among its members a presiding officer, an assistant presiding officer, and other officers the board considers necessary. The presiding officer and assistant presiding officer serve for a period of one year and may be reelected.

Sec. 110.008. MEETINGS. The board of directors of the Rural Foundation may meet as often as necessary, but shall meet at least twice a year.

Sec. 110.009. TAX EXEMPTION. All income, property, and other assets of the Rural Foundation are exempt from taxation by the state and political subdivisions of the state.

Sec. 110.010. MEMORANDUM OF UNDERSTANDING. The Rural Foundation and the Center for Rural Health Initiatives shall enter into a memorandum of understanding that:

(1) requires the board of directors and staff of the foundation to report to the executive director and executive committee of the Center for Rural Health Initiatives;

(2) allows the Center for Rural Health Initiatives to provide staff functions to the foundation;

(3) allows the Center for Rural Health Initiatives to expend funds on the foundation; and

(4) outlines the financial contributions to be made to the foundation from funds obtained from grants and other sources.

Sec. 110.011. RECORDS. (a) The Rural Foundation shall maintain financial records and reports independently from those of the Center for Rural Health Initiatives.

(b) The Rural Foundation shall comply with all filing requirements of the secretary of state and the Internal Revenue Service.

Sec. 110.012. REPORT TO CENTER FOR RURAL HEALTH INITIATIVES. Not later than the 60th day after the last day of the fiscal year, the Rural Foundation shall submit to the Center for Rural Health Initiatives a report itemizing all income and expenditures and describing all activities of the foundation during the preceding fiscal year.

Sec. 110.013. PROHIBITED USE OF FUNDS. Funds administered by the Rural Foundation may not be used to provide an abortion or a referral for an abortion, unless there is a medically necessary reason to provide the referral.

SECTION 2. Section 106.026, Health and Safety Code, is amended to read as follows:

Sec. 106.026. REPORT TO LEGISLATURE. (a) No later than January 1 of each odd-numbered year, the center shall submit a biennial report to the legislature regarding the activities of the center, the activities of the Rural Foundation, and any findings and recommendations relating to rural issues.

(b) The center shall obtain information from each county about indigent health care provided in the county and information from each university, medical school,

rural community, or rural health care provider that has performed a study relating to rural health care during the biennium. The center shall include the information obtained under this subsection in the center's report to the legislature.

SECTION 3. (a) The Center for Rural Health Initiatives shall create the Rural Foundation not later than June 1, 2002.

(b) In making the initial appointments to the board of directors of the Rural Foundation, the executive committee of the Center for Rural Health Initiatives shall designate two members for terms expiring February 1, 2003, two members for terms expiring February 1, 2005, and one member for a term expiring February 1, 2007.

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 SENATE BILL 768

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 768** 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	HOPSON
HARRIS	MAXEY
SHAPLEIGH	DELISI
VAN DE PUTTE	TELFORD
LUCIO	GRAY
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to the regulation of the practice of pharmacy and the dispensing of certain drugs.

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

SECTION 1. Sections 551.003(12), (30), and (36), Occupations Code, are amended to read as follows:

(12) "Dangerous drug" means a drug or device that:

(A) is not included in Penalty Group 1, 2, 3, or 4, Chapter 481, Health and Safety Code, and is unsafe for self-medication; or

(B) bears or is required to bear the legend:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(30) "Pharmacist-intern" means:

(A) an undergraduate student who is enrolled in the professional sequence of a college of pharmacy approved by the board and who is participating in a ~~[school-based]~~ board-approved internship program; or

(B) a graduate of a college of pharmacy who is participating in a board-approved internship.

(36) "Prescription drug" means:

(A) a substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(B) a drug or device that under federal law is required, before being dispensed or delivered, to be labeled with ~~[either of]~~ the statement ~~[following statements]~~:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(C) a drug or device that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a practitioner only.

SECTION 2. Section 559.003(d), Occupations Code, is amended to read as follows:

(d) If a person's license has been expired for one year or more, the person's license is considered to have been canceled and the person may not renew the license unless the license is the subject of a pending investigation or disciplinary action.

SECTION 3. Section 559.053, Occupations Code, is amended to read as follows:

Sec. 559.053. PROGRAM HOURS REQUIRED. A license holder satisfies the continuing education requirement by presenting evidence satisfactory to the board of completion of at least 30 ~~[24]~~ hours of continuing education during the preceding 24 months of the person's license period.

SECTION 4. Section 560.002(a), Occupations Code, is amended to read as follows:

(a) A person may not display in or on a place of business the word "pharmacy" or "apothecary" in any language, any word or combination of words of the same or similar meaning, or a graphic representation that would lead or tend to lead the public to believe that the business is a pharmacy unless the facility is a pharmacy licensed under this chapter.

SECTION 5. Section 561.005, Occupations Code, is amended to read as follows:

Sec. 561.005. SUSPENSION OF PHARMACY LICENSE FOR NONRENEWAL. (a) The board shall suspend the license and remove from the register of licensed pharmacies the name of a pharmacy that does not file a completed application and pay the renewal fee on or before the date the license expires.

(b) After review by the board, the board may determine that Subsection (a) does not apply if the license is the subject of a pending investigation or disciplinary action.

SECTION 6. Section 562.008(a), Occupations Code, is amended to read as follows:

(a) If a practitioner certifies on the prescription form that a specific prescribed brand is medically necessary, the pharmacist shall dispense the drug as written by the practitioner. The certification must be made as required by the dispensing directive adopted under Section 562.015. This subchapter does not permit a pharmacist to substitute a generically equivalent drug unless the substitution is made as provided by this subchapter [If the practitioner's signature on the form required under Section 563.002 does not clearly indicate that the prescription must be dispensed as written, the pharmacist may select a generically equivalent drug].

SECTION 7. Subchapter A, Chapter 562, Occupations Code, is amended by adding Section 562.015 to read as follows:

Sec. 562.015. DISPENSING DIRECTIVE; COMPLIANCE WITH FEDERAL LAW. (a) The board shall adopt rules to provide a dispensing directive to instruct pharmacists on the manner in which to dispense a drug according to the contents of a prescription. The rules adopted under this section must:

(1) require the use of the phrase "brand necessary" or "brand medically necessary" on a prescription form to prohibit the substitution of a generically equivalent drug for a brand name drug;

(2) be in a format that protects confidentiality as required by the Health Insurance Portability and Accountability Act of 1996 (29 U.S.C. Section 1181 et seq.) and its subsequent amendments;

(3) comply with federal and state law, including rules, with regard to formatting and security requirements;

(4) be developed to coordinate with 42 C.F.R. Section 447.331(c); and

(5) include an exemption for electronic prescriptions as provided by Subsection (b).

(b) The board shall provide an exemption from the directive adopted under this section for prescriptions transmitted electronically. The board may regulate the use of electronic prescriptions in the manner provided by federal law, including rules.

SECTION 8. Subchapter C, Chapter 562, Occupations Code, is amended by adding Section 562.108 to read as follows:

Sec. 562.108. EMERGENCY MEDICATION KITS. (a) A Class A or Class C pharmacy may maintain controlled substances and dangerous drugs in an emergency medication kit used at an institution licensed under Chapter 242 or 252, Health and Safety Code. The controlled substances and dangerous drugs may be used only for the emergency medication needs of a resident at that institution.

(b) The board shall adopt rules relating to emergency medication kits, including:

(1) the amount and type of dangerous drugs and controlled substances that may be maintained in an emergency medication kit;

(2) procedures regarding the use of drugs from an emergency medication kit;

(3) recordkeeping requirements; and

(4) security requirements.

SECTION 9. Section 565.001(a), Occupations Code, is amended to read as follows:

(a) The board may discipline an applicant for or the holder of a license to practice pharmacy if the board finds that the applicant or license holder has:

- (1) violated this subtitle or a board rule adopted under this subtitle;
- (2) engaged in unprofessional conduct as defined by board rule;
- (3) engaged in gross immorality as defined by board rule;
- (4) developed an incapacity that prevents the applicant or license holder from practicing pharmacy with reasonable skill, competence, and safety to the public;
- (5) engaged in fraud, deceit, or misrepresentation, as defined by board rule, in practicing pharmacy or in seeking a license to practice pharmacy;
- (6) been convicted of a misdemeanor involving moral turpitude or a felony;
- (7) used alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life [~~developed a drug or alcohol dependency~~];
- (8) failed to maintain records required by this subtitle or failed to maintain complete and accurate records of purchases or disposals of drugs listed in Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);
- (9) violated any provision of:
 - (A) Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.), or rules relating to one of those laws;
 - (B) Section 485.031, 485.032, 485.033, 485.034, or 485.035, Health and Safety Code; or
 - (C) a rule adopted under Section 485.011, Health and Safety Code;
- (10) aided or abetted an unlicensed person in the practice of pharmacy if the pharmacist knew or reasonably should have known that the person was unlicensed at the time;
- (11) refused entry into a pharmacy for an inspection authorized by this subtitle if the pharmacist received notification from which the pharmacist knew or reasonably should have known that the attempted inspection was authorized;
- (12) violated any pharmacy or drug statute or rule of this state, another state, or the United States;
- (13) been negligent in the practice of pharmacy;
- (14) failed to submit to an examination after hearing and being ordered to do so by the board under Section 565.052;
- (15) dispensed a prescription drug while acting outside the usual course and scope of professional practice; or
- (16) had a license to practice pharmacy issued by another state canceled, revoked, surrendered, or suspended for conduct substantially equivalent to conduct described under this subsection.

SECTION 10. Section 481.074(a), Health and Safety Code, is amended to read as follows:

- (a) A pharmacist may not:
 - (1) dispense or deliver a controlled substance or cause a controlled substance to be dispensed or delivered under the pharmacist's direction or supervision except under a valid prescription and in the course of professional practice;
 - (2) dispense a controlled substance if the pharmacist knows or should have known that the prescription was issued without a valid patient-practitioner relationship;
 - (3) fill a prescription that is not prepared or issued as prescribed by this chapter;

(4) [(3)] permit or allow a person who is not a licensed pharmacist or pharmacist intern to dispense, distribute, or in any other manner deliver a controlled substance even if under the supervision of a pharmacist, except that after the pharmacist or pharmacist intern has fulfilled his professional and legal responsibilities, a nonpharmacist may complete the actual cash or credit transaction and delivery; or

(5) [(4)] permit the delivery of a controlled substance to any person not known to the pharmacist, the pharmacist intern, or the person authorized by the pharmacist to deliver the controlled substance without first requiring identification of the person taking possession of the controlled substance, except as provided by Subsection (n).

SECTION 11. Section 483.001(2), Health and Safety Code, is amended to read as follows:

(2) "Dangerous drug" means a device or a drug that is unsafe for self-medication and that is not included in Schedules I through V or Penalty Groups 1 through 4 of Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend:

(A) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(B) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

SECTION 12. Section 483.021(a), Health and Safety Code, is amended to read as follows:

(a) A pharmacist who is requested to dispense a dangerous drug under a prescription issued by a practitioner [~~described by Section 483.001(12)(C)~~] shall determine, in the exercise of the pharmacist's professional judgment, that[-

[(+)] the prescription is [authentic;

[(2) ~~the prescription was issued under~~] a valid prescription [patient-physician relationship]; and

[(3) ~~the prescribed drug is considered necessary for the treatment of illness~~].

A pharmacist may not dispense a dangerous drug if the pharmacist knows or should have known that the prescription was issued without a valid patient-practitioner relationship.

SECTION 13. (a) The following are repealed:

(1) Sections 242.615 and 252.153, Health and Safety Code;

(2) Section 562.003, Occupations Code; and

(3) Subchapter A, Chapter 563, Occupations Code.

(b) Subsections (a)(2) and (3) of this section take effect June 1, 2002.

SECTION 14. (a) In adopting the dispensing directive under Section 562.015, Occupations Code, as added by this Act, the Texas State Board of Pharmacy shall consult with the Texas State Board of Medical Examiners and any other licensing agency that regulates health care providers who may be affected by the directive.

(b) The board shall adopt rules required by Section 562.015, Occupations Code, as added by this Act, not later than June 1, 2002.

SECTION 15. (a) In accordance with Section 311.031(c), Government Code, which gives effect to a substantive amendment enacted by the same legislature that

codifies the amended statute, the text of Sections 559.053 and 561.005, Occupations Code, as set out in Sections 3 and 5 of this Act, gives effect to changes made by Chapter 1518, Acts of the 76th Legislature, Regular Session, 1999.

(b) To the extent of any conflict, this Act prevails over another Act of the 77th Legislature, Regular Session, 2001, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 16. (a) Except as provided by Section 13(b) of this Act, this Act takes effect September 1, 2001.

(b) The change in law made by this Act to Section 559.053, Occupations Code, requiring additional hours of continuing education, applies only to a 24-month license period that begins on or after the effective date of this Act. A 24-month license period that begins before the effective date of this Act 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.

(c) Not later than December 31, 2001, the Texas State Board of Pharmacy shall adopt the rules required by Section 562.108, Occupations Code, as added by this Act.

(d) The Texas State Board of Pharmacy may enforce a rule adopted under Sections 242.615 and 252.153, Health and Safety Code. Those rules remain in effect until the Texas State Board of Pharmacy adopts rules under Subsection (c) of this section. A complaint, investigation, or other proceeding pending under Section 242.615 or 252.153, Health and Safety Code, is transferred without change in status to the Texas State Board of Pharmacy.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2164

Senator Cain submitted the following Conference Committee Report:

Austin, Texas
May 22, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2164** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

CAIN
MONCRIEF
ZAFFIRINI
HARRIS
GALLEGOS

On the part of the Senate

GOOLSBY
CHISUM
MCREYNOLDS
MCCALL
HUNTER

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1119**

Senator Armbrister 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 1119** 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.

ARMBRISTER

HINOJOSA

LUCIO

DUNNAM

MONCRIEF

KEEL

STAPLES

PUENTE

BROWN

TALTON

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of bail bond sureties; providing a penalty.

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

SECTION 1. Subdivision (2), Section 1704.001, Occupations Code, is amended to read as follows:

(2) "Bail bond surety" means a person who:

(A) executes a bail bond as a surety or cosurety for another person; or

(B) for compensation deposits cash to ensure the appearance in court of a person accused of a crime.

SECTION 2. Subchapter C, Chapter 1704, Occupations Code, is amended by adding Section 1704.109 to read as follows:

Sec. 1704.109. SOLICITATION AND ADVERTISEMENT. A board by rule may regulate solicitations or advertisements by or on behalf of license holders to protect the public from harassment, fraud, or misrepresentation.

SECTION 3. Section 1704.152, Occupations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) To be eligible for a license under this chapter, an individual, including an agent designated by a corporation in an application, must:

(1) be a resident of this state and a citizen of the United States;

(2) be at least 18 years of age; ~~and~~

(3) possess the financial resources required to comply with Section 1704.160, unless the individual is acting only as agent for a corporation holding a license under this chapter; and

(4) have, in the two years preceding the date a license application is filed:

(A) at least one year of continuous work experience in the bail bond business; and

(B) completed at least eight hours of continuing legal education in criminal law courses or bail bond law courses that are approved by the State Bar of Texas and that are offered by an institution of higher education accredited by the state.

(c) Subsection (a)(4) does not apply to the issuance of an original license:

(1) in a county before the first anniversary of the date a board is created in the county; or

(2) to an individual who applies to operate the bail bond business of a license holder who has died if the individual is related to the decedent within the first degree by consanguinity or is the decedent's surviving spouse.

SECTION 4. Section 1704.154, Occupations Code, is amended by amending Subsections (b) and (c) and adding Subsections (d) and (e) to read as follows:

(b) The application must:

(1) be in a form and contain the information prescribed by the board;

(2) state:

(A) the applicant's name, age, and address;

(B) if the applicant is a corporation, whether the applicant is:

(i) chartered or admitted to do business in this state; and

(ii) qualified to write fidelity, guaranty, and surety bonds under the

Insurance Code;

(C) the name under which the bail bond business will be conducted, including a bail bond business that is a corporation; [and]

(D) each place, including the street address and municipality, at which the business will be conducted; and

(E) the amount of cash or the cash value of a certificate of deposit or cashier's check that the applicant intends to deposit with the county treasurer if the applicant's application is approved or, if the applicant is an individual intending to execute nonexempt real property in trust to the board, the value of the real property;

(3) if the applicant is an individual, be accompanied by[:

~~[(A)]~~ a list, as required by Section 1704.155, of nonexempt real property owned by the applicant that the applicant intends to execute in trust to the board if the applicant's application is approved; and

~~[(B)]~~ a statement showing the amount of cash or cash equivalent, or the cash value of a certificate of deposit or cashier's check, that the applicant intends to deposit with the county treasurer if the applicant's application is approved; and]

(4) be accompanied by:

(A) the applicant's complete, sworn financial statement;

(B) the applicant's declaration that the applicant will comply with this chapter and the rules adopted by the board;

(C) three letters of recommendation, each from a person who:

(i) is reputable; and

(ii) has known the applicant or, if the applicant is a corporation, the agent designated by the corporation in the application ~~[person who will be in charge of the applicant's business in the county]~~ for at least three years;

(D) a \$500 filing fee;

(E) a photograph of the applicant or, if the applicant is a corporation, of the agent designated by the corporation in the application ~~[person who will be in charge of the applicant's business in the county];~~

(F) a set of fingerprints of the applicant[;] or, if the applicant is a corporation, of the agent designated by the corporation in the application [~~person who will be in charge of the applicant's business in the county~~] taken by a law enforcement officer designated by the board; [and]

(G) if the applicant [~~or, if the applicant is a corporation, the person who will be in charge of the applicant's business in the county~~] is or has been licensed under this chapter in another county:

(i) a list of each county in which the applicant holds a license; and
 (ii) a statement by the applicant that, as of the date of the application, the applicant has no unpaid final judgments of forfeiture against the applicant in any county in which the applicant holds or has held a license; and

(H) if the applicant is a corporation, a statement by the designated agent of any unpaid final judgments of forfeiture on any bond executed by the agent[; ~~a letter from the board of that county stating whether the applicant is in good standing in the county in which the person is licensed~~].

(c) A letter of recommendation submitted under Subsection (b)(4)(C) must:

(1) state that the applicant or, if the applicant is a corporation, the agent designated by the corporation in the application [~~person who will be in charge of the applicant's business in the county~~] has a reputation for honesty, truthfulness, fair dealing, and competency; and

(2) recommend that the board issue the license.

(d) The existence of an unpaid final judgment disclosed under Subsection (b)(4)(H) may not bar licensure but may be considered by the board in determining whether to grant a license to the corporation with that agent.

(e) A corporation must file a separate corporate application for each agent the corporation designates in the county.

SECTION 5. Section 1704.155, Occupations Code, is amended to read as follows:

Sec. 1704.155. REAL PROPERTY LIST. A list of nonexempt real property required under Section 1704.154(b)(3) [~~1704.154(b)(3)(A)~~] must, for each parcel listed, include:

(1) a legal description of the property that would be sufficient to convey the property by general warranty deed;

(2) a current statement from each taxing unit authorized to impose taxes on the property showing:

(A) that there is no outstanding tax lien against the property; and

(B) the net value of the property according to a current appraisal made by a real estate appraiser who is a member in good standing of a nationally recognized professional appraiser society or trade organization that has an established code of ethics, educational program, and professional certification program;

(3) a statement by the applicant that, while the property remains in trust, the applicant:

(A) agrees to pay the taxes on the property;

(B) will not further encumber the property unless the applicant notifies the board of the applicant's intent to encumber the property and the board permits the encumbrance; and

(C) agrees to maintain insurance on any improvements on the property against damage or destruction in the full amount of the value claimed for the improvements;

(4) a statement of whether the applicant is married; and

(5) if the applicant is married, a sworn statement from the applicant's spouse agreeing to transfer to the board, as a part of the trust, any right, title, or interest that the spouse may have in the property.

SECTION 6. Subsections (a), (b), and (c), Section 1704.160, Occupations Code, are amended to read as follows:

(a) On receipt of notice under Section 1704.159 that an application has been conditionally approved, the applicant, not later than the 90th day after the date of receipt of the notice, must:

(1) if the applicant is an individual:

(A) subject to Subsection (b), deposit with the county treasurer a cashier's check, certificate of deposit, or cash [~~or cash equivalent~~] in the amount stated on the application under Section 1704.154(b)(2)(E) [~~1704.154(b)(3)(B)~~]; or

(B) subject to Subsections (c)-(e), execute in trust to the board each deed to the property listed on the application under Section 1704.154(b)(3) [~~1704.154(b)(3)(A)~~]; or

(2) if the applicant is a corporation, subject to Subsection (b), deposit with the county treasurer a cashier's check, certificate of deposit, or cash in the amount stated on the application under Section 1704.154(b)(2)(E) [~~provide to the sheriff an irrevocable letter of credit as a cash equivalent to pay any final judgment of a forfeiture on a bail bond executed by the applicant~~].

(b) A deposit made under Subsection (a)(1)(A) or (a)(2) may not be less than \$50,000 [~~except that the deposit may not be less than \$10,000 in a county with a population of less than 250,000~~]. A deposit made to a county with a population of less than 250,000 shall be placed in a fund known as a bail security fund.

(c) The total value of the property executed in trust under Subsection (a)(1)(B) may not be less than \$50,000 [~~except that the value may not be less than \$10,000 in a county with a population of less than 250,000~~].

SECTION 7. Section 1704.163, Occupations Code, is amended to read as follows:

Sec. 1704.163. ATTORNEY EXEMPTION. (a) Except as provided by this section [~~Subsection (e)~~], a person not licensed under this chapter may execute a bail bond or act as a surety for another person in any county in this state if the person:

(1) is licensed to practice law in this state; and

(2) represents the other person in the [a] criminal case for which the bond was given.

(b) A person executing a bail bond or acting as a surety under this section may not engage in conduct involved with that practice that would subject a bail bond surety to license suspension or revocation. If the board [~~sheriff~~] determines that a person has violated this subsection, the person may not execute a bail bond or act as a surety under this section until the person has remedied the violation.

(c) A person executing a bail bond or acting as a surety under this section who has been paid a fee for executing the bond or acting as the surety is not relieved of liability on the bond solely because the person has not been employed to represent the principal on the merits of the criminal case.

SECTION 8. Subsection (b), Section 1704.207, Occupations Code, is amended to read as follows:

(b) If a principal is surrendered under Subsection (a) and the principal [~~an agent of the board of the county in which the bond was executed;~~] or an attorney representing

the state or an accused in the case determines that a reason for the surrender was without reasonable cause, the person may contest the surrender in the court that authorized the surrender.

SECTION 9. Section 1704.211, Occupations Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) An agent designated by a power of attorney under Subsection (a) for a corporation holding a license under this chapter must be designated by the corporation in the corporation's application for a license [holder under this chapter].

(d) A corporation may limit the authority of an agent designated under Subsection (a) by specifying the limitation in the power of attorney that is filed with the county clerk and the board.

SECTION 10. Subsection (c), Section 1704.212, Occupations Code, is amended to read as follows:

(c) For purposes of this section:

(1) a corporation is considered in default on a bail bond beginning on the 11th day after the date the trial court enters a final judgment on the scire facias and ending on the date the judgment is satisfied, [or] set aside, or superseded; and

(2) a corporation is not considered in default on a bail bond if, pending appeal, the corporation deposits cash or a supersedeas bond in the amount of the final judgment with the court in which the bond is executed.

SECTION 11. Subchapter E, Chapter 1704, Occupations Code, is amended by adding Section 1704.213 to read as follows:

Sec. 1704.213. OFFICE LOCATION. (a) A license holder shall maintain an office in the county in which the license holder holds a license.

(b) Not later than the seventh day after the date a license holder opens a new office or moves an office to a new location, the license holder shall notify the board of the location of the office.

SECTION 12. The heading of Section 1704.302, Occupations Code, is amended to read as follows:

Sec. 1704.302. PROHIBITED REFERRALS OF OR EMPLOYMENTS WITH BONDING BUSINESS; OFFENSE.

SECTION 13. Section 1704.302, Occupations Code, is amended by adding Subsection (c) and by redesignating existing Subsection (c) as Subsection (d) to read as follows:

(c) A person may not accept or receive from a license holder money, property, or any other thing of value as payment for employment with a bonding business if, within the preceding 10 years, the person has been convicted of a misdemeanor involving moral turpitude or of a felony.

(d) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.

SECTION 14. Subsections (b) and (c), Section 1704.303, Occupations Code, are amended to read as follows:

(b) A person may not advertise as a bail bond surety in a county unless the person holds a license issued under this chapter by a bail bond board in that county. A person does not violate this subsection if the person places an advertisement that appears in more than one county and:

(1) the advertisement clearly indicates the county or counties in which the person holds a license issued under this chapter; and

(2) any local telephone number in the advertisement is a local number only for a county in which the person holds a license issued under this chapter.

(c) A person commits an offense if the person violates this section. An offense under this section is a Class B [€] misdemeanor.

SECTION 15. Section 1704.304, Occupations Code, is amended by adding a new Subsection (d) and redesignating current Subsection (d) as Subsection (e) to read as follows:

(d) A person may not place a device in a place of detention, confinement, or imprisonment that dispenses a bail bond in exchange for a fee.

(e) A person commits an offense if the person violates this section. An offense under this section is a Class B misdemeanor.

SECTION 16. (a) Except as provided by Subsection (b) of this section, the changes in law made by this Act to the requirements for an original bail bond license or to renew a bail bond license apply only to an application for a bail bond license or to renew a bail bond license that is made on or after the effective date of this Act.

(b) The changes in law made by this Act to Section 1704.152, Occupations Code, relating to the renewal of a bail bond license by a person who holds a bail bond license immediately before the effective date of this Act apply only to a renewal that occurs on or after September 1, 2002.

SECTION 17. The change in law made by this Act to Subsection (c), Section 1704.302, Occupations Code, applies only to a person employed by a bonding business after the effective date of this Act.

SECTION 18. (a) The change in law made by this Act to Section 1704.303, Occupations Code, applies only to an offense committed on or after the effective date of this Act.

(b) For 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. An offense committed before the effective date of this Act is covered by the law in effect on the date the offense is committed, and the former law is continued in effect for that purpose.

SECTION 19. 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 328

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 328** have had the same

under consideration, and beg to report it back with the recommendation that it do pass.

MADLA
BIVINS
STAPLES
LUCIO

GALLEGO
SADLER
RAYMOND
WALKER
SWINFORD

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 1234**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 25, 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 1234** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI
WHITMIRE
MONCRIEF
STAPLES
SHAPIRO

NAISHTAT
E. REYNA
GREEN
HINOJOSA
KITCHEN

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 406**

Senator Cain 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 406** have had the same under

consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

CAIN
CARONA
TRUAN
SHAPIRO
BERNSEN

On the part of the Senate

HAWLEY
SWINFORD
ALEXANDER
GALLEGO
Y. DAVIS

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the preservation of rail facilities by the Texas Department of Transportation.

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

SECTION 1. (a) The legislature finds that:

(1) the transportation of raw materials and products is essential to the continued economic vitality of this state, particularly of small towns and rural areas;

(2) the state contains many industries that are heavily dependent on rail transportation for the movement of raw materials and products;

(3) the rail transportation systems in some areas of this state are adversely affected by abandonment and discontinuance proceedings that cause the cessation of rail service to those areas;

(4) raw materials and products that cannot be transported by rail are typically transported by truck over state highways and local roads and bridges, thereby contributing to increased congestion and roadway maintenance costs, decreased safety for the traveling public, and a decrease in the expected life of those roadways; and

(5) it is in the interests of all citizens of this state that existing rail systems be maintained for the most efficient and economical movement of essential raw materials and products to local, national, and export markets.

(b) The legislature further finds that it is a necessary and valid public purpose for the Texas Transportation Commission and the Texas Department of Transportation to participate in the preservation of rail service and railway corridors as provided by this Act.

SECTION 2. Chapter 13, Title 112, Revised Statutes, is amended by adding Article 6550c-2 to read as follows:

Art. 6550c-2. PRESERVATION OF RAIL FACILITIES BY TEXAS DEPARTMENT OF TRANSPORTATION

Sec. 1. DEFINITIONS. In this article:

(1) "Commission" means the Texas Transportation Commission.

(2) "Department" means the Texas Department of Transportation.

(3) "District" means a rural rail transportation district created under Chapter 623, Acts of the 67th Legislature, Regular Session, 1981 (Article 6550c, Vernon's Texas Civil Statutes).

(4) "Maintenance facility" includes a workshop, a service, storage, security, or personnel facility, and equipment for such a facility.

(5) "Rail facility" means any real or personal property, or an interest in that property, that is determined to be necessary or convenient for the provision of a rail transportation system and all property or interests in property necessary or convenient

for the acquiring, providing, using, or equipping of a rail transportation system, including rights-of-way, trackwork, train controls, stations, and maintenance facilities. The term does not include rolling stock.

(6) "Right-of-way" means a strip of land of a length and width determined by the commission to be required, necessary, or convenient for the provision of a rail transportation system and the space over, under, or on the land where trackwork is to be located.

(7) "Station" means a passenger or freight service building, terminal, or station, ticketing facility, waiting area, platform, concession, elevator, escalator, facility for handicapped access, access road, parking facility for passengers, baggage handling facility, or local maintenance facility, together with any interest in real property required, necessary, or convenient for any of those items.

(8) "Trackwork" means track, track beds, track bed preparation, ties, rail fasteners, slabs, rails, emergency crossovers, setout tracks, storage track, drains, fences, ballast, switches, bridges, and structures.

(9) "Train controls" includes signals, lights and other signaling, interlocking equipment, speed monitoring equipment, braking systems, central traffic control facilities, and communication systems.

Sec. 2. NOTIFICATION OF INTENT TO ABANDON OR DISCONTINUE SERVICE. On receipt of notice of intent to abandon or discontinue rail service described by 49 C.F.R. Section 1152.20, and its subsequent amendments, the department shall coordinate with the governing body of any municipality, county, or district in which all or a segment of the line is located as to whether:

(1) under this article, the department should acquire the rail facilities to which the notice relates; or

(2) any other actions should be taken to provide for continued rail transportation service in this state.

Sec. 3. ACQUISITION AND LEASE OF RAIL FACILITIES. (a) The commission may authorize the department to acquire rail facilities at locations and on routes the commission determines to be feasible and viable for continued rail transportation service in this state.

(b) The department may enter into an agreement with an owner of an operating railroad for the acquisition or use of rail facilities on terms the department finds to be in the best interests of this state.

(c) The department may enter into an agreement with a district to lease, or contract for the use or operation of, all or any part of a state-owned rail facility. The agreement must provide for the department's monitoring of the service and performance of an operator with which a district contracts under Chapter 623, Acts of the 67th Legislature, Regular Session, 1981 (Article 6550c, Vernon's Texas Civil Statutes), and must provide for the department's approval of a district's contract with an operator.

(d) The department may enter into an agreement with a district or a railroad company to sell all or any part of a state-owned rail facility on terms the department finds to be in the best interests of this state.

Sec. 4. ACQUISITION AND DISPOSAL OF REAL PROPERTY. (a) The commission may authorize the department to acquire by purchase, in the name of this state, any right-of-way or other interest in real property the department finds necessary or convenient to the acquisition of rail facilities under this article.

(b) The governing body of a public agency or a municipality, county, or other political subdivision may convey to the department without advertisement title to, or a right in, property that the department determines to be necessary or convenient under this section.

(c) Right-of-way acquired by the department under this article remains subject to the terms of an existing easement, lease, license, or other agreement that grants to a public utility, pipeline operator, communications company, political subdivision, or governmental entity a right to occupy or use the right-of-way.

(d) The department may sell, convey, or otherwise dispose of a right or interest in real property acquired under this section that the commission determines is no longer needed for department purposes. Real property in which this state has fee simple title that is sold, conveyed, or otherwise disposed of and that is occupied or being used by a public utility is subject to the utility's continued right to occupy or use that property.

Sec. 5. PLACEMENT OF UTILITY FACILITIES, LINES, AND EQUIPMENT.

(a) A utility has the same right to place its facilities, lines, or equipment in, over, or across right-of-way that is part of a state-owned facility as the utility has with respect to the right-of-way of a state highway under Chapter 181, Utilities Code. A utility shall notify the department of the utility's intention to exercise that authority over right-of-way that is part of state-owned rail facilities.

(b) On receipt of notice under Subsection (a) of this section, the department may designate the location in the right-of-way at which the utility may place its facilities, lines, or equipment. If the department does not respond within 90 days of the date the department receives the notice, the utility may place its facilities in a manner and at a location that does not inconvenience the public in the use of the right-of-way.

(c) The department may require a utility to relocate the utility's facilities, lines, or equipment, at the utility's expense, to allow for the expansion or relocation of rail facilities owned by the state. The department shall pay for the cost of the relocation if the utility acquired an easement or a leasehold interest in the real property occupied by the facility to be relocated before the department acquired the right-of-way under this article.

(d) A utility may use and operate a facility required to be relocated under this section at the new location for the same period and on the same terms as the utility had the right to do at the previous location of the facility.

Sec. 6. ABANDONED RAIL ACCOUNT. (a) The abandoned rail account is an account in the state highway fund. Money in the account may be appropriated only to the department to implement this article.

(b) The following funds shall be deposited to the credit of the abandoned rail account:

(1) federal funds received by this state that may be used for a purpose of this article;

(2) state funds that are appropriated for a purpose of this article;

(3) proceeds from the sale or conveyance of any state-owned rail facilities;

(4) payments for the use of any state-owned rail facility other than the Texas State Railroad operated by the Parks and Wildlife Department under Section 22.182, Parks and Wildlife Code;

(5) contributions by any entity for a purpose of this article; and

(6) notwithstanding any other law, any accumulated interest or other income earned on funds in the abandoned rail account.

(c) The abandoned rail account is exempt from any law that relates to the abolition of funds or accounts in the state treasury or that relates to the abolition of dedications or rededications of revenue in the state treasury.

Sec. 7. EXPENDITURE OF FUNDS. (a) The department may receive, accept, and expend money received from the state, a federal agency, or from another public or private source for:

(1) studies to determine the viability of rail facilities for continued rail transportation service;

(2) the acquisition of rail facilities under this article; and

(3) the relocation of utility facilities, lines, and equipment under Section 5 of this article.

(b) The department may use money in the abandoned rail account established under Section 6 of this article to carry out any power granted or duty imposed under this article.

Sec. 8. RULES. The commission shall adopt rules as necessary to implement this article.

Sec. 9. LIMITATION. This article does not authorize the department to regulate, operate, or maintain rail facilities.

SECTION 3. Section 5, Chapter 623, Acts of the 67th Legislature, Regular Session, 1981 (Article 6550c, Vernon's Texas Civil Statutes), is amended by adding Subsection (r) to read as follows:

(r) A district may not abandon a rail line of the district with respect to which state funds have been loaned or granted unless the abandonment is approved by the Texas Transportation Commission as being consistent with the policies of this Act. The commission by rule shall adopt procedures for applying for and obtaining approval under this subsection.

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 SENATE BILL 1057

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas
May 25, 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 1057** have had the same under

consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ELLIS
BIVINS
CAIN
SHAPIRO
ZAFFIRINI

On the part of the Senate

RANGEL
COLEMAN
GOOLSBY
MORRISON
UHER

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to financial aid programs, including loan repayment programs, for certain students of institutions of higher education or teacher certification programs and for certain classroom teachers.

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

SECTION 1. Subsection (e), Section 56.304, Education Code, is amended to read as follows:

(e) A person's eligibility for a TEXAS grant ends on the sixth anniversary of the initial award of a TEXAS grant to the person and the person's enrollment in an eligible institution, unless the person is provided additional time during which the person may receive a TEXAS grant under this subsection. The coordinating board shall adopt rules to provide a person who is otherwise eligible to receive a TEXAS grant additional time during which the person may receive a TEXAS grant in the event of a hardship or other good cause shown that prevents the person from continuing the person's enrollment during the period the person would otherwise have been eligible to receive a TEXAS grant, including a showing of a severe illness or other debilitating condition or that the person is or was responsible for the care of a sick, injured, or needy person.

SECTION 2. Section 61.0776, Education Code, is amended by amending Subsection (c) and adding Subsection (f) to read as follows:

(c) The board may designate an institution of higher education or other entity with appropriate facilities and resources to operate or house the center. If the board designates a public nonprofit entity created by the legislature to operate or house the center, the board may reimburse the entity from money appropriated for that purpose for the costs incurred by the entity in carrying out the activities of the center under this section.

(f) The board and the commissioner of education shall develop a plan or set of recommendations to ensure that information on the TEXAS grant program and other financial aid information described by Subsection (a) is adequately publicized to prospective students and financial aid recipients and their parents and to school counselors, student financial aid offices, and other appropriate entities. The board and the commissioner of education shall report the results of the study and the plan or recommendations to the legislature not later than October 1, 2002. This subsection expires January 1, 2003.

SECTION 3. Section 56.309, Education Code, is redesignated as Subchapter O, Chapter 56, Education Code, and amended to read as follows:

SUBCHAPTER O. TEACH FOR TEXAS
FINANCIAL ASSISTANCE PROGRAM

Sec. 56.351. DEFINITIONS. In this subchapter:

(1) "Coordinating board" means the Texas Higher Education Coordinating Board.

(2) "Eligible institution of higher education" means:

(A) an institution of higher education; or

(B) a private or independent institution of higher education as defined by Section 61.003.

Sec. 56.352 [56.309]. PURPOSE OF [TEACH FOR TEXAS GRANT] PROGRAM. [(a)] The purpose of this subchapter [the Teach for Texas grant program] is to attract to the teaching profession persons who have expressed interest in teaching and to support the certification of those persons as classroom teachers by providing a grant on the condition that the recipient serve as a classroom teacher in the public schools of this state for a specified period.

Sec. 56.353. ELIGIBILITY FOR GRANT; TEACHING AGREEMENT. (a) [(b)] A Teach for Texas [tuition] grant is available only to a person who [receives a TEXAS grant under Section 56.304 or 56.305;] applies for a [Teach for Texas tuition] grant[-]; and:

(1) is seeking educator certification;

(2) is enrolled in an eligible institution of higher education in this state:

(A) as a junior or senior in a baccalaureate degree program; or

(B) in the person's first academic year in an educator certification program after receiving a baccalaureate degree;

(3) makes satisfactory progress toward completion of the person's educator certification program; and

(4) satisfies one of the following [if]:

(A) the person is seeking educator certification [(1) the degree program is] in a teaching field certified by the commissioner of education as experiencing a critical shortage of teachers in this state in the year in which the person receives the grant and agrees to teach full-time for five years at the preschool, primary, or secondary level in a public school in this state in that teaching field [begins the degree program]; or

(B) [(2)] the person agrees to teach full-time for five years at the preschool, primary, or secondary level in a public school in this state in a community, which is not required to be specifically designated at the time the person receives the grant, certified by the commissioner of education as experiencing a critical shortage of teachers in any year in which the person receives a grant under this subchapter [section] or in any subsequent year in which the person fulfills the teaching obligation.

(b) The coordinating board in awarding Teach for Texas grants shall give priority to applicants who demonstrate financial need.

(c) If the money available for grants in a period for which grants are awarded exceeds the amount needed to provide grants to all eligible applicants described by Subsection (b), the coordinating board shall award grants from the remaining money to additional eligible applicants. The coordinating board shall prescribe by rule the eligibility requirements for these applicants based on the factors that the coordinating board considers appropriate to further the purposes of this subchapter.

(d) If the money available for grants in a period for which grants are awarded is insufficient to provide grants to all eligible applicants described by Subsection (b), the coordinating board shall give the highest priority to applicants who demonstrate the greatest financial need.

(e) A person may not receive a Teach for Texas tuition grant for more than three academic years or the equivalent.

(f) A person is not eligible to receive a Teach for Texas grant if the person has been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of another jurisdiction involving a controlled substance, as defined by Chapter 481, Health and Safety Code, unless the person has met the other applicable eligibility requirements under this subchapter and has:

(1) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or

(2) been pardoned, had the record of the offense expunged from the person's record, or otherwise has been released from the resulting ineligibility to receive a grant under this subchapter.

(g) For the purpose of this section, a person makes satisfactory academic progress toward completion of an educator certification program if the person:

(1) completes at least 75 percent of the semester credit hours attempted in the student's most recent academic year; and

(2) earns an overall grade point average of at least 2.5 on a four-point scale or the equivalent on coursework previously attempted at institutions of higher education.

Sec. 56.354. AMOUNT OF GRANT; PAYMENT OF GRANT. (a) The amount of a Teach for Texas grant is equal to four times the current amount of a TEXAS grant under Subchapter M for a student enrolled in a general academic teaching institution [To receive a Teach for Texas tuition grant, a person must agree to teach full-time for five years at the preschool, primary, or secondary level in a public school in this state in the person's chosen critical field or in a community experiencing a critical teacher shortage, as applicable].

(b) ~~(d)~~ The coordinating board shall pay the amount of a Teach for Texas [tuition] grant in installments, with a substantially equal amount paid in each semester or term based on the number of semesters in which a typical full-time student would complete the recipient's educator certification program. The coordinating board may adjust the amount of a grant for a semester or term, or award a supplemental grant, to ensure that a grant recipient who completes the educator certification program receives the total amount of the recipient's grant [under this section is equal to two times the amount of a TEXAS grant authorized under Section 56.307(b) for the same semester or term].

Sec. 56.355. ELIGIBILITY FOR TEXAS GRANT NOT AFFECTED. A person may receive both a TEXAS grant under Subchapter M [Section 56.304 or 56.305] and a Teach for Texas grant under this subchapter [section] for the same semester or term.

Sec. 56.356. SATISFYING TEACHING OBLIGATION; REPAYMENT. (a) A person who receives a Teach for Texas grant ~~[(e) The person]~~ must begin fulfilling the teaching obligation of the person's grant [this section] not later than the 18th month after the person completes the educator certification program for which the person received the grant [degree program and any related courses required for teacher certification], unless the coordinating board grants the person additional time to begin fulfilling the teaching obligation.

(b) The person must complete the teaching obligation not later than the sixth year after the date the person begins to fulfill the teaching obligation. The coordinating board shall grant a person additional time to complete the teaching obligation for good cause.

(c) ~~(f)~~ The coordinating board shall cancel a person's teaching obligation if the board determines that the person:

(1) has become permanently disabled so that the person is not able to teach; or

(2) has died.

(d) ~~(g)~~ The coordinating board shall require a person who receives a Teach for Texas grant ~~under this section~~ to sign a promissory note acknowledging the conditional nature of the grant and promising to repay the outstanding amount of the grant plus applicable interest and reasonable collection costs if the person does not satisfy the applicable conditions. The board shall determine the terms of the promissory note.

(e) ~~(h)~~ The amount required to be repaid by a person who fails to complete the teaching obligation of the person's grant shall be determined in proportion to the portion of the total teaching obligation that the person has not satisfied.

(f) ~~(i)~~ A person receiving a Teach for Texas ~~[tuition]~~ grant is considered to have failed to satisfy the conditions of the grant, and the grant automatically becomes a loan, if the person fails to remain enrolled in or to make steady progress in the person's educator certification program and, if applicable, the person's baccalaureate degree program for which the grant was made without good cause as determined by the coordinating board or if the person fails to become certified as a teacher not later than the 18th month after the date the person completes the educator certification program [receives a degree].

Sec. 56.357. TEACH FOR TEXAS ALTERNATIVE CERTIFICATION ASSISTANCE PROGRAM. (a) The coordinating board shall establish a program under which the coordinating board awards grants to assist persons seeking educator certification through alternative educator certification programs as provided by this section.

(b) To be eligible for a grant under the program, a person must apply for a grant and:

(1) have received a baccalaureate degree from an eligible institution of higher education or an accredited out-of-state institution of higher education; and

(2) enroll in an alternative educator certification program described by Section 21.049 and satisfy either of the following conditions:

(A) be seeking educator certification in a teaching field certified by the commissioner of education as experiencing a critical shortage of teachers in this state in the year in which the person receives the grant and agree to teach for five years in a public school in this state in that teaching field; or

(B) agree to teach for five years in a public school in this state in a community, which is not required to be specifically designated at the time the person receives the grant, certified by the commissioner of education as experiencing a critical shortage of teachers in any year in which the person receives a grant under this section or in any subsequent year in which the person fulfills the teaching obligation.

(c) A person is not eligible to receive a grant under the program if the person has been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of another jurisdiction involving a controlled substance, as defined by Chapter 481, Health and Safety Code, unless the person has met the other applicable eligibility requirements under this section and has:

(1) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or

(2) been pardoned, had the record of the offense expunged from the person's record, or otherwise has been released from the resulting ineligibility to receive a grant under the program.

(d) In selecting applicants to receive grants under the program, the coordinating board shall consider:

(1) the financial resources of an applicant;

(2) the efficient use of the money available for grants;

(3) the opportunity of applicants from all regions of this state to receive grants; and

(4) any other factor the coordinating board considers appropriate to further the purposes of this subchapter.

(e) The amount of a grant under the program is equal to two times the current amount of a TEXAS grant under Subchapter M for a student enrolled in a general academic teaching institution. The coordinating board may pay the amount of the grant in installments during the period in which the person is enrolled in the person's alternative educator certification program.

(f) The person must begin fulfilling the person's teaching obligation not later than the 18th month after the person completes the alternative educator certification program, unless the coordinating board for good cause grants the person additional time to begin fulfilling the teaching obligation. The person must complete the teaching obligation not later than the sixth year after the date the person begins to fulfill the teaching obligation. The coordinating board shall grant a person additional time to complete the teaching obligation for good cause.

(g) The coordinating board shall cancel a person's teaching obligation if the coordinating board determines that the person:

(1) has become permanently disabled so that the person is not able to teach; or

(2) has died.

(h) The coordinating board shall require a person who receives a grant to sign a promissory note acknowledging the conditional nature of the grant and promising to repay the amount of the grant plus applicable interest and reasonable collection costs if the person does not satisfy the applicable conditions of the grant. The coordinating board shall determine the terms of the promissory note.

(i) The amount required to be repaid by a person who fails to complete the teaching obligation of the person's grant shall be determined in proportion to the portion of the teaching obligation that the person has not satisfied.

(j) A person receiving a grant is considered to have failed to satisfy the conditions of the grant, and the grant automatically becomes a loan, if the person, without good cause as determined by the coordinating board, fails to:

(1) remain enrolled in or to make steady progress in the alternative educator certification program for which the grant was made or, with the approval of the coordinating board, in another alternative educator certification program; or

(2) become certified as a classroom teacher not later than the 18th month after the date the person completes the alternative educator certification program.

Sec. 56.358. FUNDING; ALLOCATION OF FUNDING. (a) The coordinating board may solicit and accept gifts and grants from any public or private source for the purposes of this subchapter.

(b) The legislature may appropriate money for the purposes of this subchapter.

SECTION 4. The heading to Subchapter M, Chapter 56, Education Code, as added by Chapter 1590, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

SUBCHAPTER M. TOWARD EXCELLENCE, ACCESS,
& SUCCESS (TEXAS) GRANT PROGRAM
[~~AND TEACH FOR TEXAS GRANT PROGRAM~~]

SECTION 5. Subsection (b), Section 56.308, Education Code, is amended to read as follows:

(b) Each school district shall:

(1) notify its middle school students, junior high school students, and high school students, those students' teachers and counselors, and those students' parents of the TEXAS grant and Teach for Texas grant programs [~~established under this subchapter~~], the eligibility requirements of each program, the need for students to make informed curriculum choices to be prepared for success beyond high school, and sources of information on higher education admissions and financial aid in a manner that assists the district in implementing a strategy adopted by the district under Section 11.252(a)(4); and

(2) ensure that each student's official transcript or diploma indicates whether the student has completed or is on schedule to complete:

(A) the recommended or advanced high school curriculum required for grant eligibility under Section 28.002 or 28.025; or

(B) for a school district covered by Section 56.304(f)(1), the required portion of the recommended or advanced high school curriculum in the manner described by Section 56.304(f)(2).

SECTION 6. Section 56.311, Education Code, is amended to read as follows:

Sec. 56.311. LEGISLATIVE OVERSIGHT COMMITTEE. (a) The Legislative Oversight Committee on the TEXAS grant program and Teach for Texas grant program [~~programs established by this subchapter~~] is composed of six members as follows:

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

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

(b) The committee shall:

(1) meet at least twice a year with the coordinating board; and

(2) receive information regarding rules relating to the TEXAS grant program and Teach for Texas grant program [~~programs established by this subchapter~~] that have been adopted by the coordinating board or proposed for adoption by the coordinating board.

(c) The committee may request reports and other information from the coordinating board relating to the operation of the TEXAS grant program and Teach for Texas grant program [~~programs under this subchapter~~] by the coordinating board.

(d) The committee shall review the specific recommendations for legislation related to this subchapter that are proposed by the coordinating board.

(e) The committee shall monitor the operation of the TEXAS grant program and Teach for Texas grant program [~~programs established under this subchapter~~], with emphasis on the manner of the award of grants, the number of grants awarded, and the educational progress made by persons who have received grants under those programs [~~this subchapter~~].

(f) The committee shall file a report with the governor, lieutenant governor, and speaker of the house of representatives not later than December 31 of each even-numbered year.

(g) The report shall include identification of any problems in the TEXAS grant program and Teach for Texas grant program [~~programs operated under this subchapter~~] with recommended solutions for the coordinating board and for legislative action.

SECTION 7. Subsection (a), Section 11.252, Education Code, is amended to read as follows:

(a) Each school district shall have a district improvement plan that is developed, evaluated, and revised annually, in accordance with district policy, by the superintendent with the assistance of the district-level committee established under Section 11.251. The purpose of the district improvement plan is to guide district and campus staff in the improvement of student performance for all student groups in order to attain state standards in respect to the academic excellence indicators adopted under Section 39.051. The district improvement plan must include provisions for:

(1) a comprehensive needs assessment addressing district student performance on the academic excellence indicators, and other appropriate measures of performance, that are disaggregated by all student groups served by the district, including categories of ethnicity, socioeconomic status, sex, and populations served by special programs, including students in special education programs under Subchapter A, Chapter 29;

(2) measurable district performance objectives for all appropriate academic excellence indicators for all student populations, including students in special education programs under Subchapter A, Chapter 29, and other measures of student performance that may be identified through the comprehensive needs assessment;

(3) strategies for improvement of student performance that include:

(A) instructional methods for addressing the needs of student groups not achieving their full potential;

(B) methods for addressing the needs of students for special programs, such as suicide prevention, conflict resolution, violence prevention, or dyslexia treatment programs;

(C) dropout reduction;

(D) integration of technology in instructional and administrative programs;

(E) discipline management;

(F) staff development for professional staff of the district;

(G) career education to assist students in developing the knowledge, skills, and competencies necessary for a broad range of career opportunities; and

(H) accelerated education;

(4) strategies for providing to middle school, junior high school, and high school students, those students' teachers and counselors, and those students' parents information about:

(A) higher education admissions and financial aid opportunities;

(B) the TEXAS grant program and the Teach for Texas grant program established under [~~Subchapter M,~~] Chapter 56;

(C) the need for students to make informed curriculum choices to be prepared for success beyond high school; and

(D) sources of information on higher education admissions and financial aid;

(5) resources needed to implement identified strategies;

(6) staff responsible for ensuring the accomplishment of each strategy;

(7) timelines for ongoing monitoring of the implementation of each improvement strategy; and

(8) formative evaluation criteria for determining periodically whether strategies are resulting in intended improvement of student performance.

SECTION 8. Subchapter M, Chapter 61, Education Code, is amended by amending Section 61.702 and adding Section 61.7021 to read as follows:

Sec. 61.702. ELIGIBILITY FOR CLASSROOM TEACHER REPAYMENT ASSISTANCE. (a) To be eligible to receive repayment assistance for classroom teachers, a person must apply to the board and must [have]:

(1) have completed at least one year of employment as [and be employed as] a full-time classroom teacher at the preschool, primary, or secondary level in a public school in [the elementary or secondary schools of] this state in an area or field of acute teacher shortage as designated by the commissioner of education [State Board of Education]; and

(2) be employed as a full-time classroom teacher at the preschool, primary, or secondary level in a public school in this state in an area or field described by Subdivision (1).

(b) A person is not eligible for repayment assistance for classroom teachers under this subchapter if the person has received a Teach for Texas grant or other financial assistance under Subchapter O, Chapter 56, or under former Section 56.309.

(c) The board shall give priority in granting repayment assistance for classroom teachers to a person who received repayment assistance for classroom teachers for the preceding school year. The priority terminates if the person does not apply for or is not eligible for that assistance. In extraordinary circumstances, the board may allow a person to maintain the priority after one or more years in which the person is unable to teach as a classroom teacher.

Sec. 61.7021. ELIGIBILITY FOR BORDER INSTITUTION FACULTY REPAYMENT ASSISTANCE. To be eligible to receive repayment assistance for border institution faculty, a person must apply to the board and must:

(1) have [or

(2)] received a doctoral degree not earlier than September 1, 1994, from a public or private institution of higher education accredited as required by the board; and

(2) be employed as a full-time faculty member with instructional duties in an institution of higher education located in a county that borders the United Mexican States.

SECTION 9. Section 61.705, Education Code, is amended by amending Subsection (c) and adding Subsections (d) and (e) to read as follows:

(c) The minimum amount of repayment assistance that may be awarded in one year to a person who qualifies for the assistance under Section 61.702 is the lesser of:

(1) \$1,000; or

(2) the amount of principal and accrued interest that is due on eligible loans in that year.

(d) A person may not receive repayment assistance for classroom teachers under this subchapter in a total amount that exceeds \$5,000, and may not receive that repayment assistance for more than five years.

(e) The minimum amount of repayment assistance that may be awarded [received] in one year to [by] a person who qualifies for the assistance under [described by] Section 61.7021 [61.702(2)] is 50 percent of the amount of principal and accrued interest that is due on eligible loans that year.

SECTION 10. Subsection (a), Section 61.708, Education Code, is amended to read as follows:

(a) The board shall adopt rules necessary for the administration of this subchapter, including[:

~~[(1) a rule that sets a minimum or maximum amount of repayment assistance that may be received in one year by a person described by Section 61.702(1); and~~

~~[(2) a rule that sets a maximum amount of repayment assistance that may be received in one year by a person who qualifies for the assistance under Section 61.7021 [described by Section 61.702(2)].~~

SECTION 11. (a) The change in law made by this Act relating to the eligibility of a person to receive a TEXAS grant applies beginning with students who demonstrate eligibility to receive a grant for the 2001-2002 academic year.

(b) The Texas Higher Education Coordinating Board shall implement the changes made by this Act to the Teach for Texas grant program and to the classroom teacher loan repayment assistance program under Subchapter M, Chapter 61, Education Code, as soon as practicable after the effective date of this Act, but not later than the 2002-2003 academic year.

(c) The Texas Higher Education Coordinating Board shall adopt initial rules for awarding grants and shall award grants under the Teach for Texas alternative certification assistance program established under Section 56.357, Education Code, as added by this Act, as soon as practicable.

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

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 787

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 787** have had the same

under consideration, and beg to report it back with the recommendation that it do pass.

MADLA
HARRIS
GALLEGOS

On the part of the Senate

GALLEGO
T. KING
WALKER

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 695**

Senator Wentworth again submitted the following Conference Committee Report:

Austin, Texas
May 25, 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 695** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WENTWORTH
FRASER
SHAPLEIGH
STAPLES

On the part of the Senate

A. REYNA
HAGGERTY
YARBROUGH
MORENO
GOOLSBY

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 154**

Senator Gallegos submitted the following Conference Committee Report:

Austin, Texas
May 25, 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 154** have had the same

under consideration, and beg to report it back with the recommendation that it do pass.

GALLEGOS

CARONA

ZAFFIRINI

MONCRIEF

BERNSEN

On the part of the Senate

THOMPSON

FARABEE

CHAVEZ

ELLIS

EILAND

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2255**

Senator Harris submitted the following Conference Committee Report:

Austin, Texas

May 25, 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 2255** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HARRIS

FRASER

JACKSON

LUCIO

On the part of the Senate

MCCALL

CHISUM

HARTNETT

TILLERY

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2530**

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas

May 25, 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 2530** have had the same

under consideration, and beg to report it back with the recommendation that it do pass.

ELLIS
FRASER
SIBLEY
LUCIO
BIVINS

On the part of the Senate

JUNELL
HARTNETT
MCREYNOLDS
AVERITT
MARTINEZ FISCHER

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 45**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 25, 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 45** 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.

ZAFFIRINI
NELSON
BERNSEN
MONCRIEF
CARONA

On the part of the Senate

NAISHTAT
COLEMAN
GRAY
NORIEGA

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

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

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

SECTION 1. 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.

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

SECTION 3. This Act takes effect September 1, 2001, 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 Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 510**

Senator Armbrister 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 510** 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.

ARMBRISTER
LINDSAY
JACKSON
SHAPIRO

On the part of the Senate

WALKER
CALLEGARI
GEREN
R. LEWIS

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the procurement methods a political subdivision or a related entity may use.

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

SECTION 1. Sections 252.021(a) and (c), Local Government Code, are amended to read as follows:

(a) Before a municipality may enter into a contract that requires an expenditure of more than \$15,000 from one or more municipal funds, the municipality must comply with the procedure prescribed by this subchapter and Subchapter C [~~chapter~~] for competitive sealed bidding or competitive sealed proposals or with a method described by Subchapter H, Chapter 271.

(c) A municipality may use the competitive sealed proposal procedure [~~only~~] for high technology procurements and [~~or~~], in a municipality with a population of 75,000 or more, for the purchase of insurance.

SECTION 2. Section 252.022, Local Government Code, is amended by adding Subsection (d) to read as follows:

(d) This chapter does not apply to an expenditure described by Section 252.021(a) if the governing body of a municipality determines that a method described by Subchapter H, Chapter 271, provides a better value for the municipality with respect to that expenditure than the procedures described in this chapter and the municipality adopts and uses a method described in that subchapter with respect to that expenditure.

SECTION 3. Section 252.043, Local Government Code, is amended to read as follows:

Sec. 252.043. AWARD OF CONTRACT. (a) If the competitive sealed bidding requirement applies to the contract for goods or services, the contract must be awarded to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality.

(b) In determining the best value for the municipality, the municipality may consider:

- (1) the purchase price;
- (2) the reputation of the bidder and of the bidder's goods or services;
- (3) the quality of the bidder's goods or services;
- (4) the extent to which the goods or services meet the municipality's needs;
- (5) the bidder's past relationship with the municipality;
- (6) the impact on the ability of the municipality to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- (7) the total long-term cost to the municipality to acquire the bidder's goods or services; and
- (8) any relevant criteria specifically listed in the request for bids or proposals.

(c) Before awarding a contract under this section, a municipality must indicate in the bid specifications and requirements that the contract may be awarded either to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality.

(d) The contract must be awarded to the lowest responsible bidder if the competitive sealed bidding requirement applies to the contract for construction of:

- (1) highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction; or
- (2) buildings or structures that are incidental to projects that are primarily civil engineering construction projects.

(e) If the competitive sealed bidding requirement applies to the contract for construction of a facility, as that term is defined by Section 271.111, the contract must be awarded to the lowest responsible bidder or awarded under the method described by Subchapter H, Chapter 271.

(f) The governing body may reject any and all bids.

(g) A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. This chapter does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

(h) ~~(b)~~ If the competitive sealed proposals requirement applies to the contract, the contract must be awarded to the responsible offeror whose proposal is determined

to be the most advantageous to the municipality considering the relative importance of price and the other evaluation factors included in the request for proposals.

(i) This section does not apply to a contract for professional services, as that term is defined by Section 2254.002, Government Code.

SECTION 4. Sections 262.023(a) and (b), Local Government Code, are amended to read as follows:

(a) Before a county may purchase one or more items under a contract that will require an expenditure exceeding \$25,000, the commissioners court of the county must comply with the competitive bidding or competitive proposal procedures prescribed by this subchapter or with a method described by Subchapter H, Chapter 271. All bids or proposals must be sealed.

(b) The competitive bidding and competitive proposal requirements established by Subsection (a) apply ~~[only]~~ to contracts for which payment will be made from current funds or bond funds or through time warrants. Contracts [However, contracts] for which payments will be made through certificates of obligation are governed by The Certificate of Obligation Act of 1971 (Subchapter C, Chapter 271). Contracts for which payment will be made through anticipation notes are subject to the competitive bidding provisions of The Certificate of Obligation Act of 1971 (Subchapter C, Chapter 271) in the same manner as certificates of obligation.

SECTION 5. Chapter 271, Local Government Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. ALTERNATIVE PROJECT DELIVERY
METHODS FOR CERTAIN PROJECTS

Sec. 271.111. DEFINITIONS. In this subchapter:

(1) "Architect" means an individual registered as an architect under Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes).

(2) "Contractor" in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for constructing, rehabilitating, altering, or repairing all or part of the facility at the contracted price.

(3) "Design-build contract" means a single contract with a design-build firm for the design and construction of a facility.

(4) "Design-build firm" means a partnership, corporation, or other legal entity or team that includes an engineer or architect and builder qualified to engage in building construction in Texas.

(5) "Design criteria package" means a set of documents that provides sufficient information to permit a design-build firm to prepare a response to a governmental entity's request for qualifications and any additional information requested, including criteria for selection. The design criteria package must specify criteria the governmental entity considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, or any other requirement, as applicable.

(6) "Engineer" means an individual registered as a professional engineer under The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes).

(7) "Facility" means buildings the design and construction of which are governed by accepted building codes. The term does not include:

(A) highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction; or

(B) buildings or structures that are incidental to projects that are primarily civil engineering construction projects.

(8) "Fee" in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means the payment a construction manager receives for its overhead and profit in performing its services.

(9) "General conditions" in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials.

(10) "Governmental entity" means a municipality, county, or river authority.

Sec. 271.112. APPLICABILITY; OTHER LAW. (a) Any provision in the charter of a home-rule municipality or any regulation of a county or river authority that requires the use of competitive bidding or competitive sealed proposals or that prescribes procurement procedures and that is in conflict with this subchapter controls over this subchapter unless the governing body of the governmental entity elects to have this subchapter supersede the charter or regulation.

(b) The purchasing requirements of Section 361.426, Health and Safety Code, apply to purchases by a governmental entity made under this subchapter.

(c) Except as provided by this section, to the extent of any conflict, this subchapter prevails over any other law relating to the purchasing of goods and services except a law relating to contracting with historically underutilized businesses.

(d) For a contract entered into by a municipality or river authority under any of the methods provided by this subchapter, the municipality or river authority shall publish notice of the time and place the bids or proposals, or the responses to a request for qualifications, will be received and opened. The notice must be published in a newspaper of general circulation in the county in which the municipality's central administrative office is located or the county in which the greatest amount of the river authority's territory is located once each week for at least two weeks before the deadline for receiving bids, proposals, or responses. If there is not a newspaper of general circulation in that county, the notice shall be published in a newspaper of general circulation in the county nearest the county seat of the county in which the municipality's central administrative office is located or the county in which the greatest amount of the river authority's territory is located. In a two-step procurement process, the time and place the second step bids, proposals, or responses will be received are not required to be published separately.

(e) For a contract entered into by a county under any of the methods provided by this subchapter, the county shall publish notice of the time and place the bids or proposals, or the responses to a request for qualifications, will be received and opened. The notice must be published in a newspaper of general circulation in the county once

each week for at least two weeks before the deadline for receiving bids, proposals, or responses. If there is not a newspaper of general circulation in the county, the notice shall be:

- (1) posted at the courthouse door of the county; and
- (2) published in a newspaper of general circulation in the nearest county.

(f) A contract entered into or an arrangement made in violation of this subchapter is contrary to public policy and is void. A court may enjoin performance of a contract made in violation of this subchapter. A county attorney, a district attorney, a criminal district attorney, a resident of a county that enters into a contract under this subchapter or of a county in which a municipality or a river authority that enters into a contract under this subchapter is located, or any interested party may bring an action for an injunction. A party who prevails in an action brought under this subsection is entitled to reasonable attorney's fees as approved by the court.

Sec. 271.113. PROCUREMENT PROCEDURES. (a) In entering into a contract for the construction of a facility, a governmental entity may use any of the following methods that provides the best value for the governmental entity:

- (1) competitive bidding;
- (2) competitive sealed proposals for construction services;
- (3) a design-build contract;
- (4) a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager; or
- (5) a job order contract for the minor repair, rehabilitation, or alteration of a facility.

(b) Except as provided by this subchapter, in determining to whom to award a contract, the governmental entity may consider:

- (1) the purchase price;
- (2) the reputation of the vendor and of the vendor's goods or services;
- (3) the quality of the vendor's goods or services;
- (4) the extent to which the goods or services meet the governmental entity's needs;
- (5) the vendor's past relationship with the governmental entity;
- (6) the impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses;
- (7) the total long-term cost to the governmental entity to acquire the vendor's goods or services; and
- (8) any other relevant factor specifically listed in the request for bids or proposals.

Sec. 271.114. EVALUATION OF BIDS AND PROPOSALS FOR CONSTRUCTION SERVICES. (a) The governing body of a governmental entity that is considering a construction contract using a method specified by Section 271.113(a) other than competitive bidding must, before advertising, determine which method provides the best value for the governmental entity. The governing body may, as appropriate, delegate its authority under this section to a designated representative.

(b) The governmental entity shall base its selection among offerors on criteria authorized to be used under Section 271.113(b). The governmental entity shall publish in the request for bids, proposals, or qualifications all the criteria that will be used to evaluate the offerors and the relative weights given to the criteria.

(c) The governmental entity shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

Sec. 271.115. SELECTING CONTRACTOR FOR CONSTRUCTION SERVICES THROUGH COMPETITIVE BIDDING. (a) Except to the extent prohibited by other law and to the extent consistent with this subchapter, a governmental entity may use competitive bidding to select a contractor to perform construction, rehabilitation, alteration, or repair services for a facility.

(b) Except as otherwise specifically provided by this subsection, Subchapter B does not apply to a competitive bidding process under this section. Sections 271.026, 271.027(a), and 271.0275 apply to a competitive bidding process under this section.

(c) A governmental entity shall award a competitively bid contract at the bid amount to the bidder offering the best value to the governmental entity according to the selection criteria that were established by the governmental entity. The selection criteria may include the factors listed in Section 271.113(b).

Sec. 271.116. SELECTING CONTRACTOR FOR CONSTRUCTION SERVICES THROUGH COMPETITIVE SEALED PROPOSALS. (a) In selecting a contractor for construction, rehabilitation, alteration, or repair services for a facility through competitive sealed proposals, a governmental entity shall follow the procedures prescribed by this section.

(b) The governmental entity shall select or designate an engineer or architect to prepare construction documents for the project. The selected or designated engineer or architect has full responsibility for complying with The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), as applicable. If the engineer or architect is not a full-time employee of the governmental entity, the governmental entity shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code.

(c) The governmental entity shall provide or contract for, independently of the contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the governmental entity. The governmental entity shall select those services for which it contracts in accordance with Section 2254.004, Government Code, and shall identify them in the request for proposals.

(d) The governmental entity shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria, estimated budget, project scope, schedule, and other information that contractors may require to respond to the request. The governmental entity shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

(e) The governmental entity shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Not later than the 45th day after the date of opening the proposals, the governmental entity shall evaluate and rank each proposal submitted in relation to the published selection criteria.

(f) The governmental entity shall select the offeror that offers the best value for the governmental entity based on the published selection criteria and on its ranking

evaluation. The governmental entity shall first attempt to negotiate a contract with the selected offeror. The governmental entity and its engineer or architect may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the governmental entity is unable to negotiate a contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

(g) In determining best value for the governmental entity, the governmental entity is not restricted to considering price alone, but may consider any other factor stated in the selection criteria.

Sec. 271.117. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AGENT. (a) A governmental entity may use the construction manager-agent method for the construction, rehabilitation, alteration, or repair of a facility. In using that method and in entering into a contract for the services of a construction manager-agent, a governmental entity shall follow the procedures prescribed by this section.

(b) A construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that provides consultation to the governmental entity regarding construction, rehabilitation, alteration, or repair of the facility. A governmental entity using the construction manager-agent method may, under the contract between the governmental entity and the construction manager-agent, require the construction manager-agent to provide administrative personnel, equipment necessary to perform duties under this section, and on-site management and other services specified in the contract. A construction manager-agent represents the governmental entity in a fiduciary capacity.

(c) Before or concurrently with selecting a construction manager-agent, the governmental entity shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), as applicable. If the engineer or architect is not a full-time employee of the governmental entity, the governmental entity shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. The governmental entity's engineer or architect may not serve, alone or in combination with another person, as the construction manager-agent unless the engineer or architect is hired to serve as the construction manager-agent under a separate or concurrent procurement conducted in accordance with this subchapter. This subsection does not prohibit the governmental entity's engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable licensing laws.

(d) A governmental entity shall select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner as provided for the selection of engineers or architects under Section 2254.004, Government Code, except that notice must be published as provided by Section 271.112(d).

(e) A governmental entity using the construction manager-agent method shall procure, in accordance with applicable law, a general contractor, trade contractors, or subcontractors who will serve as the prime contractor for their specific portion of the work.

(f) The governmental entity or the construction manager-agent shall procure in accordance with Section 2254.004, Government Code, all of the testing of construction materials engineering, the inspection services, and the verification testing services necessary for acceptance of the facility by the governmental entity.

Sec. 271.118. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AT-RISK. (a) A governmental entity may use the construction manager-at-risk method for the construction, rehabilitation, alteration, or repair of a facility. In using that method and in entering into a contract for the services of a construction manager-at-risk, a governmental entity shall follow the procedures prescribed by this section.

(b) A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the governmental entity regarding construction during and after the design of the facility.

(c) Before or concurrently with selecting a construction manager-at-risk, the governmental entity shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), as applicable. If the engineer or architect is not a full-time employee of the governmental entity, the governmental entity shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. The governmental entity's engineer, architect, or construction manager-agent for a project may not serve, alone or in combination with another, as the construction manager-at-risk unless the engineer or architect is hired to serve as the construction manager-at-risk under a separate or concurrent procurement conducted in accordance with this subchapter.

(d) The governmental entity shall provide or contract for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the governmental entity. The governmental entity shall select those services for which it contracts in accordance with Section 2254.004, Government Code.

(e) The governmental entity shall select the construction manager-at-risk in either a one-step or two-step process. The governmental entity shall prepare a request for proposals, in the case of a one-step process, or a request for qualifications, in the case of a two-step process, that includes general information on the project site, project scope, schedule, selection criteria, estimated budget, and the time and place for receipt of proposals or qualifications, as applicable, and other information that may assist the governmental entity in its selection of a construction manager-at-risk. The governmental entity shall state the selection criteria in the request for proposals or qualifications, as applicable. The selection criteria may include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk. If a one-step process is used, the governmental entity may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general

conditions. If a two-step process is used, the governmental entity may not request fees or prices in step one. In step two, the governmental entity may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and its price for fulfilling the general conditions.

(f) At each step, the governmental entity shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, the governmental entity shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened. Not later than the 45th day after the date of opening the proposals, the governmental entity shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

(g) The governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity based on the published selection criteria and on its ranking evaluation. The governmental entity shall first attempt to negotiate a contract with the selected offeror. If the governmental entity is unable to negotiate a satisfactory contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(h) A construction manager-at-risk shall publicly advertise, as prescribed for a governmental entity under Section 271.025, and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions. A construction manager-at-risk may seek to perform portions of the work itself if the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if the governmental entity determines that the construction manager-at-risk's bid or proposal provides the best value for the governmental entity.

(i) The construction manager-at-risk and the governmental entity or its representative shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, engineer, architect, or governmental entity. All bids or proposals shall be made public after the award of the contract or not later than the seventh day after the date of final selection of bids or proposals, whichever is later.

(j) If the construction manager-at-risk reviews, evaluates, and recommends to the governmental entity a bid or proposal from a trade contractor or subcontractor but the governmental entity requires another bid or proposal to be accepted, the governmental entity shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk may incur because of the governmental entity's requirement that another bid or proposal be accepted.

(k) If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this section, the construction manager-at-risk may, without advertising, fulfill the contract requirements itself or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

(l) If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the project budget, as specified in the request for qualifications. The construction manager shall deliver the bonds not later than the 10th day after the date the construction manager executes the contract unless the construction manager furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Sec. 271.119. DESIGN-BUILD CONTRACTS FOR FACILITIES. (a) A governmental entity may use the design-build method for the construction, rehabilitation, alteration, or repair of a facility. In using that method and in entering into a contract for the services of a design-build firm, the contracting governmental entity and the design-build firm shall follow the procedures provided by this section.

(b) The governmental entity shall select or designate an engineer or architect independent of the design-build firm to act as its representative for the duration of the work on the facility. If the governmental entity's engineer or architect is not a full-time employee of the governmental entity, the governmental entity shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code.

(c) The governmental entity shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project. The governmental entity shall also prepare a design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires engineering or architectural services that constitute the practice of engineering within the meaning of The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or the practice of architecture within the meaning of Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), those services shall be provided in accordance with the applicable law.

(d) The governmental entity shall evaluate statements of qualifications and select a design-build firm in two phases:

(1) In phase one, the governmental entity shall prepare a request for qualifications and evaluate each offeror's experience, technical competence, and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Each offeror must certify to the governmental entity that each engineer or architect that is a member of its team was selected based on demonstrated competence and qualifications in the manner provided by Section 2254.004, Government Code. The governmental entity shall qualify a maximum of five offerors to submit additional information and, if the governmental entity chooses, to interview for final selection.

(2) In phase two, the governmental entity shall evaluate the information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of an interview. The governmental entity may request additional information regarding demonstrated competence and qualifications,

considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, costing methodology, or other factors as appropriate. The governmental entity may not require offerors to submit detailed engineering or architectural designs as part of the proposal. The governmental entity shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications. The governmental entity shall select the design-build firm that submits the proposal offering the best value for the governmental entity on the basis of the published selection criteria and on its ranking evaluations. The governmental entity shall first attempt to negotiate a contract with the selected offeror. If the governmental entity is unable to negotiate a satisfactory contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(e) Following selection of a design-build firm under Subsection (d), that firm's engineers or architects shall complete the design, submitting all design elements for review and determination of scope compliance to the governmental entity or the governmental entity's engineer or architect before or concurrently with construction.

(f) An engineer shall have responsibility for compliance with the engineering design requirements and all other applicable requirements of The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes). An architect shall have responsibility for compliance with the requirements of Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes).

(g) The governmental entity shall provide or contract for, independently of the design-build firm, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the governmental entity. The governmental entity shall select those services for which it contracts in accordance with Section 2254.004, Government Code.

(h) The design-build firm shall supply a signed and sealed set of construction documents for the project to the governmental entity at the conclusion of construction.

(i) A payment or performance bond is not required for, and may not provide coverage for, the portion of a design-build contract under this section that includes design services only. If a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the project budget, as specified in the design criteria package. The design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the design-build firm will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Sec. 271.120. JOB ORDER CONTRACTS FOR FACILITIES CONSTRUCTION OR REPAIR. (a) A governmental entity may award job order contracts for the minor construction, repair, rehabilitation, or alteration of a facility if the work is of a recurring nature but the delivery times are indefinite and indefinite quantities and orders are awarded substantially on the basis of predescribed and prepriced tasks.

(b) The governmental entity may establish contractual unit prices for a job order contract by:

(1) specifying one or more published construction unit price books and the applicable divisions or line items; or

(2) providing a list of work items and requiring the offerors to bid or propose one or more coefficients or multipliers to be applied to the price book or work items as the price proposal.

(c) The governmental entity shall advertise for, receive, and publicly open sealed proposals for job order contracts.

(d) The governmental entity may require offerors to submit additional information besides rates, including experience, past performance, and proposed personnel and methodology.

(e) The governmental entity may award job order contracts to one or more job order contractors in connection with each solicitation of bids or proposals.

(f) An order for a job or project under the job order contract must be signed by the governmental entity's representative and the contractor. The order may be a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities or may be a unit price order based on the quantities and line times delivered.

(g) The contractor shall provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.

(h) The base term of a job order contract is for the period and with any renewal options that the governmental entity sets forth in the request for proposals. If the governmental entity fails to advertise that term, the base term may not exceed two years and is not renewable without further advertisement and solicitation of proposals.

(i) If a job order contract or an order issued under the contract requires engineering or architectural services that constitute the practice of engineering within the meaning of The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or the practice of architecture within the meaning of Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), those services shall be provided in accordance with applicable law.

Sec. 271.121. RIGHT TO WORK. (a) This section applies to a governmental entity while the governmental entity is engaged in:

(1) procuring goods or services;

(2) awarding a contract; or

(3) overseeing procurement or construction for a public work or public improvement.

(b) Notwithstanding any other provision of this chapter, a governmental entity:

(1) may not consider whether a vendor is a member of or has another relationship with any organization; and

(2) shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

SECTION 6. Section 292.001(a), Local Government Code, is amended to read as follows:

(a) The commissioners court of a county may purchase, construct, or provide by other means, including a lease or a lease with an option to purchase, or may reconstruct, improve, or equip a building or rooms, other than the courthouse, for the housing of county or district offices, county or district courts, justice of the peace courts, county records or equipment (including voting machines), or county jail

facilities, or for the conducting of other public business, if the commissioners court determines that the additional building or rooms are necessary. The commissioners court may purchase and improve the necessary site for the building or rooms.

SECTION 7. Section 292.022(b), Local Government Code, is amended to read as follows:

(b) The commissioners court of a county may acquire land for a branch county office building, ~~and~~ may purchase, construct, repair, equip, or improve the building, and may acquire the building through a lease or lease with an option to purchase, at a location in a municipality that:

- (1) has a population of 10,000 or more;
- (2) is not the county seat; and
- (3) is not contiguous to the county seat.

SECTION 8. Section 2254.002(1), Government Code, is amended to read as follows:

(1) "Governmental entity" means:

(A) a state agency or department;
(B) a district, authority, county, municipality, or other political subdivision of the state; ~~or~~

(C) a local government corporation or another entity created by or acting on behalf of a political subdivision in the planning and design of a construction project; or

(D) a publicly owned utility.

SECTION 9. Section 44.031(b), Education Code, is amended to read as follows:

(b) Except as provided by this subchapter, in determining to whom to award a contract, the district may consider:

- (1) the purchase price;
- (2) the reputation of the vendor and of the vendor's goods or services;
- (3) the quality of the vendor's goods or services;
- (4) the extent to which the goods or services meet the district's needs;
- (5) the vendor's past relationship with the district;
- (6) the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses;

(7) the total long-term cost to the district to acquire the vendor's goods or services; and

(8) any other relevant factor specifically listed in the request for bids or proposals ~~[that a private business entity would consider in selecting a vendor]~~.

SECTION 10. Section 44.0315(4), Education Code, is amended to read as follows:

(4) "Facility" means real property, including buildings and associated structures and improved or unimproved land. The term does not include:

(A) highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction; or

(B) buildings or structures that are incidental to projects that are primarily civil engineering construction projects.

SECTION 11. Section 44.035(b), Education Code, is amended to read as follows:

(b) The district shall base its selection among offerors on criteria authorized to be used under Section 44.031(b). The district shall publish in the request for bids,

proposals, or qualifications the criteria that will be used to evaluate the offerors and the relative weights[, if known at the time of the publication,] given to the criteria.

SECTION 12. Sections 44.036(c) and (e), Education Code, are amended to read as follows:

(c) The district shall ~~may~~ designate an engineer or architect independent of the design-build firm to act as its representative for the duration of the work on the facility. If the district's engineer or architect is not a full-time employee of the district, any engineer or architect designated shall be selected on the basis of demonstrated competence and qualifications in accordance with Section 2254.004 [Subchapter A, Chapter 2254], Government Code.

(e) The district shall evaluate statements of qualifications and select a design-build firm in two phases:

(1) In phase one, the district shall prepare a request for qualifications and evaluate each offeror's experience, technical competence, and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Each offeror must certify to the district that each engineer or architect that is a member of its team was selected based on demonstrated competence and qualifications, in the manner provided by Section 2254.004, Government Code. The district shall qualify a maximum of five offerors to submit additional information and, if the district chooses, to interview for final selection.

(2) In phase two, the district shall evaluate the information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview. The district may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, costing methodology, or other factors as appropriate. The district may not require offerors to submit detailed engineering or architectural designs as part of the proposal. The district shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications. The district shall select the design-build firm that submits the proposal offering the best value for the district on the basis of the published selection criteria and on its ranking evaluations. The district shall first attempt to negotiate with the selected offeror a contract. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

SECTION 13. Subchapter B, Chapter 44, Education Code, is amended by adding Section 44.043 to read as follows:

Sec. 44.043. RIGHT TO WORK. (a) This section applies to a school district while the school district is engaged in:

(1) procuring goods or services;
(2) awarding a contract; or
(3) overseeing procurement or construction for a public work or public improvement.

(b) Notwithstanding any other provision of this chapter, a school district:

(1) may not consider whether a vendor is a member of or has another relationship with any organization; and

(2) shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

SECTION 14. Sections 51.780(c) and (f), Education Code, are amended to read as follows:

(c) The board may designate an engineer or architect independent of the design-build firm to act as its representative for the duration of the work on the facility. If the board's engineer or architect is not a full-time employee of the institution, any engineer or architect designated shall be selected on the basis of demonstrated competence and qualifications in accordance with Section 2254.004 [Subchapter A, Chapter 2254], Government Code.

(f) The board or its representative shall evaluate statements of qualifications and select a design-build firm in two phases:

(1) In phase one, the board or its representative shall prepare a request for qualifications and evaluate each offeror's experience, technical competence, and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Each offeror must certify to the board that each engineer or architect that is a member of its team was selected based on demonstrated competence and qualifications in the manner provided by Section 2254.004, Government Code. The board or its representative shall qualify a maximum of five offerors to submit additional information and, if the board or its representative chooses, to interview for final selection.

(2) In phase two, the board or its representative shall evaluate the information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview. The board or its representative may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, costing methodology, or other factors as appropriate. The board or its representative may not require offerors to submit detailed engineering or architectural designs as part of the proposal. The board or its representative shall rank each proposal submitted on the basis of the criteria specified in the request for qualifications. The board or its representative shall select the design-build firm that submits the proposal offering the best value for the institution on the basis of the published selection criteria and on its ranking evaluations. The board or its representative shall first attempt to negotiate with the selected offeror a contract. If the board or its representative is unable to negotiate a satisfactory contract with the selected offeror, the institution shall, formally and in writing, end all negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

SECTION 15. (a) The changes in law made by this Act apply only to a contract for which requests for bids, requests for proposals, or requests for qualifications are published or distributed after September 1, 2001.

(b) The change in law made by this Act to Section 252.043, Local Government Code, applies only to a contract awarded on or after the effective date of this Act.

SECTION 16. 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 2684**

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 25, 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 2684** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER
CAIN
TRUAN
BERNSEN

KUEMPEL
KOLKHORST
TRUITT
E. JONES
Y. DAVIS

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 2005**

Senator Wentworth submitted the following Conference Committee Report:

Austin, Texas
May 25, 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 2005** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WENTWORTH
BARRIENTOS
BROWN
LUCIO
NELSON

CORTE
COUNTS
WALKER
T. KING
PUENTE

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 11**

Senator Nelson submitted the following Conference Committee Report:

Austin, Texas
May 25, 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 11** 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.

NELSON
ZAFFIRINI
HARRIS
SIBLEY
CARONA

GRAY
MAXEY
MCCALL
KITCHEN

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to protecting the privacy of medical records; providing penalties.

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

SECTION 1. Title 2, Health and Safety Code, is amended by adding Subtitle I to read as follows:

SUBTITLE I. MEDICAL RECORDS

CHAPTER 181. MEDICAL RECORDS PRIVACY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 181.001. DEFINITIONS. (a) Unless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) In this chapter:

(1) "Covered entity" means any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site;

(B) comes into possession of protected health information;

(C) obtains or stores protected health information under this chapter; or

(D) is an employee, agent, or contractor of a person described by Paragraph (A), (B), or (C) insofar as the employee, agent, or contractor creates, receives, obtains, maintains, uses, or transmits protected health information.

(2) "Health care operations" has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards. The term does not include marketing as described in 45 C.F.R. Section 164.514(e) and any subsequent amendments.

(3) "Health Insurance Portability and Accountability Act and Privacy Standards" means the privacy requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and the final rules adopted on December 28, 2000, and published at 65 Fed. Reg. 82798 et seq., and any subsequent amendments.

(4) "Marketing" means the promotion or advertisement, by a covered entity, of specific products or services if the covered entity receives, directly or indirectly, a financial incentive or remuneration for the use, access, or disclosure of protected health information. Marketing does not include a communication for treatment or health care operations by a health care provider, health plan, or participants in an organized health care arrangement or their affiliated covered entities or business associates.

(5) "Protected health information" means individually identifiable health information, including demographic information collected from an individual, that:

(A) relates to:

(i) the past, present, or future physical or mental health or condition of an individual;

(ii) the provision of health care to an individual; or

(iii) the past, present, or future payment for the provision of health care to an individual; and

(B) identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Sec. 181.002. APPLICABILITY. (a) This chapter does not affect the validity of another statute of this state that provides greater confidentiality for information made confidential by this chapter.

(b) To the extent that this chapter conflicts with another law with respect to protected health information collected by a governmental body or unit, this chapter controls.

Sec. 181.003. SOVEREIGN IMMUNITY. This chapter does not waive sovereign immunity to suit or liability.

Sec. 181.004. RULES. A state agency that licenses or regulates a covered entity may adopt rules as necessary to carry out the purposes of this chapter.

[Sections 181.005-181.050 reserved for expansion]

SUBCHAPTER B. EXEMPTIONS

Sec. 181.051. PARTIAL EXEMPTION. Except for Subchapter D, this chapter does not apply to:

(1) a licensee as defined in Article 28B.01, Insurance Code;

(2) an entity established under Article 5.76-3, Insurance Code; or

(3) an employer.

Sec. 181.052. PROCESSING PAYMENT TRANSACTIONS BY FINANCIAL INSTITUTIONS. (a) In this section, "financial institution" has the meaning assigned by Section 1101, Right to Financial Privacy Act of 1978 (12 U.S.C. Section 3401), and its subsequent amendments.

(b) To the extent that a covered entity engages in activities of a financial institution, or authorizes, processes, clears, settles, bills, transfers, reconciles, or collects payments for a financial institution, this chapter and any rule adopted under this chapter does not apply to the covered entity with respect to those activities, including the following:

(1) using or disclosing information to authorize, process, clear, settle, bill, transfer, reconcile, or collect a payment for, or related to, health plan premiums or health care, if the payment is made by any means, including a credit, debit, or other payment card, an account, a check, or an electronic funds transfer; and

(2) requesting, using, or disclosing information with respect to a payment described by Subdivision (1):

(A) for transferring receivables;

(B) for auditing;

(C) in connection with a customer dispute or an inquiry from or to a customer;

(D) in a communication to a customer of the entity regarding the customer's transactions, payment card, account, check, or electronic funds transfer;

(E) for reporting to consumer reporting agencies; or

(F) for complying with a civil or criminal subpoena or a federal or state law regulating the covered entity.

Sec. 181.053. NONPROFIT AGENCIES. The department shall by rule exempt from this chapter a nonprofit agency that pays for health care services or prescription drugs for an indigent person only if the agency's primary business is not the provision of health care or reimbursement for health care services.

Sec. 181.054. WORKERS' COMPENSATION. This chapter does not apply to:
(1) workers' compensation insurance or a function authorized by Title 5, Labor Code; or

(2) any person or entity in connection with providing, administering, supporting, or coordinating any of the benefits under a self-insured program for workers' compensation.

Sec. 181.055. EMPLOYEE BENEFIT PLAN. This chapter does not apply to:

(1) an employee benefit plan; or

(2) any covered entity or other person, insofar as the entity or person is acting in connection with an employee benefit plan.

Sec. 181.056. AMERICAN RED CROSS. This chapter does not prohibit the American Red Cross from accessing any information necessary to perform its duties to provide disaster relief, disaster communication, or emergency leave verification services for military personnel.

Sec. 181.057. INFORMATION RELATING TO OFFENDERS WITH MENTAL IMPAIRMENTS. This chapter does not apply to an agency described by Section 614.017 with respect to the disclosure, receipt, transfer, or exchange of medical and health information and records relating to individuals in the custody of an agency or in community supervision.

Sec. 181.058. EDUCATIONAL RECORDS. In this chapter, protected health information does not include:

(1) education records covered by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) and its subsequent amendments; or

(2) records described by 20 U.S.C. Section 1232g(a)(4)(B)(iv) and its subsequent amendments.

[Sections 181.059-181.100 reserved for expansion]

SUBCHAPTER C. ACCESS TO AND USE
OF HEALTH CARE INFORMATION

Sec. 181.101. COMPLIANCE WITH FEDERAL REGULATIONS. A covered entity shall comply with the Health Insurance Portability and Accountability Act and Privacy Standards relating to:

- (1) an individual's access to the individual's protected health information;
- (2) amendment of protected health information;
- (3) uses and disclosures of protected health information, including requirements relating to consent; and
- (4) notice of privacy practices for protected health information.

Sec. 181.102. INFORMATION FOR RESEARCH. (a) A covered entity may disclose protected health information to a person performing health research, regardless of the source of funding of the research, for the purpose of conducting health research, only if the person performing health research has obtained:

- (1) individual consent or authorization for use or disclosure of protected health information for research required by federal law;
- (2) the express written authorization of the individual required by this chapter;
- (3) documentation that a waiver of individual consent or authorization required for use or disclosure of protected health information has been granted by an institutional review board or privacy board as required under federal law; or
- (4) documentation that a waiver of the individual's express written authorization required by this chapter has been granted by a privacy board established under this section.

(b) A privacy board:

- (1) must consist of members with varying backgrounds and appropriate professional competency as necessary to review the effect of the research protocol for the project or projects on the privacy rights and related interests of the individuals whose protected health information would be used or disclosed;
- (2) must include at least one member who is not affiliated with the covered entity or an entity conducting or sponsoring the research, and not related to any person who is affiliated with an entity described by this subsection; and
- (3) may not have any member participating in the review of any project in which the member has a conflict of interest.

(c) A privacy board may grant a waiver of the express written authorization for the use of protected health information if the privacy board obtains the following documentation:

- (1) a statement identifying the privacy board and the date on which the waiver of the express written authorization was approved by the privacy board;
- (2) a statement that the privacy board has determined that the waiver satisfies the following criteria:
 - (A) the use or disclosure of protected health information involves no more than minimal risk to the affected individuals;
 - (B) the waiver will not adversely affect the privacy rights and welfare of those individuals;

(C) the research could not practicably be conducted without the waiver;

(D) the research could not practicably be conducted without access to and use of the protected health information;

(E) the privacy risks to individuals whose protected health information is to be used or disclosed are reasonable in relation to the anticipated benefits, if any, to the individuals and the importance of the knowledge that may reasonably be expected to result from the research;

(F) there is an adequate plan to protect the identifiers from improper use and disclosure;

(G) there is an adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers or the retention is otherwise required by law; and

(H) there are adequate written assurances that the protected health information will not be reused or disclosed to another person or entity, except:

(i) as required by law;

(ii) for authorized oversight of the research project; or

(iii) for other research for which the use or disclosure of protected health information would be permitted by state or federal law;

(3) a brief description of the protected health information for which use or access has been determined to be necessary by the privacy board under Subdivision (2)(D); and

(4) a statement that the waiver of express written authorization has been approved by the privacy board following the procedures under Subsection (e).

(d) A waiver must be signed by the presiding officer of the privacy board or the presiding officer's designee.

(e) The privacy board must review the proposed research at a convened meeting at which a majority of the privacy board members are present, including at least one member who satisfies the requirements of Subsection (b)(2). The waiver of express written authorization must be approved by the majority of the privacy board members present at the meeting, unless the privacy board elects to use an expedited review procedure. The privacy board may use an expedited review procedure only if the research involves no more than minimal risk to the privacy of the individual who is the subject of the protected health information of which use or disclosure is being sought. If the privacy board elects to use an expedited review procedure, the review and approval of the waiver of express written authorization may be made by the presiding officer of the privacy board or by one or more members of the privacy board as designated by the presiding officer.

(f) A covered entity may disclose protected health information to a person performing health research if the covered entity obtains from the person performing the health research representations that:

(1) use or disclosure is sought solely to review protected health information as necessary to prepare a research protocol or for similar purposes preparatory to research;

(2) no protected health information is to be removed from the covered entity by the person performing the health research in the course of the review; and

(3) the protected health information for which use or access is sought is necessary for the research purposes.

(g) A person who is the subject of protected health information collected or created in the course of a clinical research trial may access the information at the conclusion of the research trial.

Sec. 181.103. DISCLOSURE OF INFORMATION TO PUBLIC HEALTH AUTHORITY. A covered entity may use or disclose protected health information without the express written authorization of the individual for public health activities or to comply with the requirements of any federal or state health benefit program or any federal or state law. A covered entity may disclose protected health information:

(1) to a public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public interventions;

(2) to a public health authority or other appropriate government authority authorized by law to receive reports of child or adult abuse, neglect, or exploitation; and

(3) to any state agency in conjunction with a federal or state health benefit program.

[Sections 181.104-181.150 reserved for expansion]

SUBCHAPTER D. PROHIBITED ACTS

Sec. 181.151. REIDENTIFIED INFORMATION. A person may not reidentify or attempt to reidentify an individual who is the subject of any protected health information without obtaining the individual's consent or authorization if required under this chapter or other state or federal law.

Sec. 181.152. MARKETING USES OF INFORMATION. (a) A covered entity may not disclose, use, or sell or coerce an individual to consent to the disclosure, use, or sale of protected health information, including prescription patterns, for marketing purposes without the consent or authorization of the individual who is the subject of the protected health information.

(b) A written marketing communication must be sent in an envelope showing only the addresses of sender and recipient and must:

(1) state the name and toll-free number of the health care entity sending the marketing communication; and

(2) explain the recipient's right to have the recipient's name removed from the sender's mailing list.

(c) A person who receives a request under Subsection (b)(2) to remove a person's name from a mailing list shall remove the person's name not later than the fifth day after the date the person receives the request.

[Sections 181.153-181.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

Sec. 181.201. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The attorney general may institute an action for injunctive relief to restrain a violation of this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the attorney general may institute an action for civil penalties against a covered entity for a violation of this chapter. A civil penalty assessed under this section may not exceed \$3,000 for each violation.

(c) If the court in which an action under Subsection (b) is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed \$250,000.

Sec. 181.202. DISCIPLINARY ACTION. In addition to the penalties prescribed by this chapter, a violation of this chapter by an individual or facility that is licensed by an agency of this state is subject to investigation and disciplinary proceedings, including probation or suspension by the licensing agency. If there is evidence that the violations of this chapter constitute a pattern or practice, the agency may revoke the individual's or facility's license.

Sec. 181.203. EXCLUSION FROM STATE PROGRAMS. In addition to the penalties prescribed by this chapter, a covered entity shall be excluded from participating in any state-funded health care program if a court finds the covered entity engaged in a pattern or practice of violating this chapter.

Sec. 181.204. AVAILABILITY OF OTHER REMEDIES. This chapter does not affect any right of a person under other law to bring a cause of action or otherwise seek relief with respect to conduct that is a violation of this chapter.

SECTION 2. Title 1, Insurance Code, is amended by adding Chapter 28B to read as follows:

CHAPTER 28B. PRIVACY OF HEALTH INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Art. 28B.01. DEFINITIONS. In this chapter:

(1) "Health information" means any information or data regarding an individual, other than age or gender, whether oral or recorded in any form or medium, that is created by or derived from a health care provider or the individual and that relates to:

(A) the past, present, or future physical, mental, or behavioral health or condition of an individual;

(B) the provision of health care to an individual; or

(C) payment for the provision of health care to an individual.

(2) "Licensee" means a person who holds or is required to hold a license, registration, certificate of authority, or other authority under this code or another insurance law of this state. The term includes an insurance company, group hospital service corporation, mutual insurance company, local mutual aid association, statewide mutual assessment company, stipulated premium insurance company, health maintenance organization, reciprocal or interinsurance exchange, Lloyd's plan, fraternal benefit society, county mutual insurer, farm mutual insurer, or insurance agent.

(3) "Nonpublic personal health information" means health information:

(A) that identifies an individual who is the subject of the information; or

(B) with respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

Art. 28B.02. PERSONALLY IDENTIFIABLE HEALTH INFORMATION: PRIVACY NOTICE AND DISCLOSURE AUTHORIZATION. (a) A licensee must obtain an authorization to disclose any nonpublic personal health information before making such a disclosure.

(b) The request for authorization required by this article may be in written or electronic form and must:

(1) state the identity of the consumer or customer who is the subject of the nonpublic personal health information;

- (2) describe:
 - (A) the types of nonpublic personal health information to be disclosed;
 - (B) the parties to whom the licensee discloses nonpublic personal health information;
 - (C) the purpose of the disclosure;
 - (D) how the information will be used; and
 - (E) the procedure for revoking the authorization;
- (3) include the signature and date signed of:
 - (A) the consumer or customer who is the subject of the nonpublic personal health information; or
 - (B) the individual who is legally empowered to grant authority;
- (4) provide notice:
 - (A) of the length of time for which the authorization is valid; and
 - (B) that the consumer or customer may revoke the authorization at any time; and
- (5) specify the amount of time that the authorization remains valid, which may not exceed 24 months.

(c) The right of a consumer or customer to revoke an authorization at any time is subject to the rights of an individual who acted in reliance on the authorization before receiving notice of a revocation.

(d) The licensee shall retain the original or a copy of the authorization in the record of the individual who is the subject of the nonpublic personal health information.

Art. 28B.03. DELIVERY OF AUTHORIZATION. (a) A request for authorization and an authorization form may be delivered to a consumer or a customer if the request and the authorization form are clear and conspicuous.

(b) A licensee must include delivery of the authorization in a notice to the consumer or customer only if the licensee intends to disclose protected health information under this chapter.

Art. 28B.04. EXCEPTIONS. A licensee may disclose nonpublic personal health information to the extent that the disclosure is necessary to perform the following insurance functions on behalf of that licensee:

- (1) the investigation or reporting of actual or potential fraud, misrepresentation, or criminal activity;
- (2) underwriting;
- (3) the placement or issuance of an insurance policy;
- (4) loss control services;
- (5) ratemaking and guaranty fund functions;
- (6) reinsurance and excess loss insurance;
- (7) risk management;
- (8) case management;
- (9) disease management;
- (10) quality assurance;
- (11) quality improvement;
- (12) performance evaluation;
- (13) health care provider credentialing verification;
- (14) utilization review;
- (15) peer review activities;

- (16) actuarial, scientific, medical, or public policy research;
- (17) grievance procedures;
- (18) the internal administration of compliance, managerial, and information systems;
- (19) policyholder services;
- (20) auditing;
- (21) reporting;
- (22) database security;
- (23) the administration of consumer disputes and inquiries;
- (24) external accreditation standards;
- (25) the replacement of a group benefit plan or workers' compensation policy or program;
- (26) activities in connection with a sale, merger, transfer, or exchange of all or part of a business or operating unit;
- (27) any activity that permits disclosure without authorization under the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.), as amended;
- (28) disclosure that is required, or is a lawful or appropriate method to enforce the licensee's rights or the rights of other persons engaged, in carrying out a transaction or providing a product or service that the consumer requests or authorizes;
- (29) claims administration, adjustment, and management;
- (30) any activity otherwise permitted by law, required pursuant to a governmental reporting authority, or required to comply with legal process; and
- (31) any other insurance functions that the commissioner approves that are:
 - (A) necessary for appropriate performance of insurance functions; and
 - (B) fair and reasonable to the interests of consumers.

Art. 28B.05. EXCEPTION FOR COMPLIANCE WITH FEDERAL RULES. This subchapter does not apply to a licensee who is required to comply with the standards governing the privacy of individually identifiable health information adopted by the United States Secretary of Health and Human Services under Section 262(a), Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sections 1320d-1320d-8).

Art. 28B.06. PROTECTION OF FAIR CREDIT REPORTING ACTS. (a) This chapter may not be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) and an inference may not be drawn based on this chapter regarding whether information is transaction or experience information under Section 603 of that Act (15 U.S.C. Section 1681a).

(b) This chapter does not preempt or supersede a state law related to medical record, health, or insurance information privacy that is in effect on July 1, 2002.

Art. 28B.07. VIOLATION; PENALTIES. A licensee may not knowingly or wilfully violate this chapter.

Art. 28B.08. RULES. The commissioner may adopt rules as necessary to implement this chapter.

Art. 28B.09. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The attorney general may institute an action for injunctive relief to restrain a violation of this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the attorney general may institute an action for civil penalties against a covered entity or health care

entity for a violation of this chapter. A civil penalty assessed under this section may not be less than \$3,000 for each violation.

(c) If the court in which an action under Subsection (b) is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed \$250,000.

(d) The civil penalty authorized by this article is in addition to any other civil, administrative, or criminal action provided by law.

Art. 28B.10. DISCIPLINARY ACTION. In addition to the penalties prescribed by this chapter, a violation of this chapter by a licensee is subject to investigation and disciplinary proceedings, including probation or suspension. Evidence of a pattern or practice of violations under this chapter may subject the licensee to license revocation.

Art. 28B.11. EXCLUSION FROM STATE PROGRAMS. In addition to the penalties prescribed by this chapter, a licensee shall be excluded from participating in any state-funded health care program if there is evidence that the licensee engaged in a pattern or practice of violating this chapter.

Art. 28B.12. AVAILABILITY OF OTHER REMEDIES. This chapter does not affect any right of a person under other law to bring a cause of action or otherwise seek relief with respect to conduct that is a violation of this chapter.

SECTION 3. Section 161.032, Health and Safety Code, is amended to read as follows:

Sec. 161.032. RECORDS AND PROCEEDINGS CONFIDENTIAL. (a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.

(b) Notwithstanding Section 551.002, Government Code, the following proceedings may be held in a closed meeting following the procedures prescribed by Subchapter E, Chapter 551, Government Code:

(1) a [A] proceeding of a medical peer review committee, as defined by Section 151.002, Occupations Code [1.03, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes)], or medical committee;[-] or

(2) a meeting of the governing body of a public hospital, hospital district, [or] hospital authority, or health maintenance organization of a public hospital, hospital authority, hospital district, or state-owned teaching hospital at which the governing body receives records, information, or reports provided by a medical committee, [or] medical peer review committee, or compliance officer [is not subject to Chapter 551, Government Code].

(c) Records, information, or reports of a medical committee, [or] medical peer review committee, or compliance officer and records, information, or reports provided by a medical committee, [or] medical peer review committee, or compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under Chapter 552, Government Code.

(d) [(b)] The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.

(e) The records, information, and reports received or maintained by a compliance officer retain the protection provided by this section only if the records, information, or reports are received, created, or maintained in the exercise of a proper function of the compliance officer as provided by the Office of Inspector General of the United States Department of Health and Human Services.

(f) [(e)] This section and Subchapter A, Chapter 160, Occupations Code [Section 5.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes)], do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, hospital district, hospital authority, or extended care facility.

SECTION 4. The heading to Subchapter D, Chapter 161, Health and Safety Code, is amended to read as follows:

**SUBCHAPTER D. MEDICAL COMMITTEES, [AND] MEDICAL
PEER REVIEW COMMITTEES, AND COMPLIANCE OFFICERS**

SECTION 5. (a) Except as provided by Subsection (c), this Act takes effect September 1, 2001.

(b) A covered entity shall comply with the requirements of Chapter 181, Health and Safety Code, as added by this Act, not later than September 1, 2003.

(c) Chapter 28B, Insurance Code, as added by this Act, takes effect January 1, 2002.

(d) The commissioner of insurance may delay the date for compliance with Chapter 28B, Insurance Code, as added by this Act, if the commissioner determines that an entity needs more time to establish policies and systems to comply with the requirements of that chapter.

(e) An authorization or consent granting access to an individual's health care records executed before the effective date of this Act is governed by the law in effect when the authorization or consent was executed, and the former law continues in effect for that purpose.

The Conference Committee Report was filed with the Secretary of the Senate.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SCR 72 by Staples, In memory of Allen Grobe of Palestine.

SR 1203 by Jackson, In memory of Cecil Wayne Gamble of Shoreacres.

SR 1205 by Staples, In memory of the life of Philip L. Jander.

SR 1214 by Wentworth, In memory of Belton Kleberg Johnson.

Congratulatory Resolutions

SR 1202 by Madla, Congratulating Shaine Alaine Muller and Brandon Wynne Morris.

SR 1204 by Jackson, Commending the Texas City plant of Marathon Ashland Petroleum.

SR 1207 by Wentworth, Congratulating Ana Paula and Mark Watson on the birth of their daughter, Katalina Lizette Watson.

SR 1210 by Staples, Commending the City of Bullard on its newly dedicated Bullard Area Veteran's Monument.

SR 1211 by Duncan, Congratulating John Hester Walker of Big Spring.

SR 1212 by Shapiro, Commending James Bowie Elementary School in Richardson.

SR 1213 by Shapiro, Commending Mathews Elementary School in Plano.

SR 1215 by Wentworth, Commending the Kerrville Folk Festival.

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

HCR 313 (Cain), Honoring James Larry Tucker on his retirement as superintendent of the Leonard ISD.

ADJOURNMENT

Pursuant to a previously adopted motion, the Senate at 7:30 p.m. adjourned, in memory of Raul L. Longoria of the Rio Grande Valley, until 10:00 a.m. tomorrow.

APPENDIX

SENT TO SECRETARY OF STATE

May 25, 2001

SJR 16, SJR 37

SENT TO GOVERNOR

May 25, 2001

SB 82, SB 108, SB 158, SB 177, SB 218, SB 272, SB 314, SB 326, SB 350, SB 352, SB 355, SB 367, SB 377, SB 430, SB 437, SB 518, SB 643, SB 684, SB 697, SB 766, SB 779, SB 846, SB 961, SB 986, SB 1205, SB 1371

SIGNED BY GOVERNOR

May 25, 2001

SB 1175

In Memory
of
Raul L. Longoria

Senator Truan offered the following resolution:

(Senate Resolution 1121)

WHEREAS, The Senate of the State of Texas joins citizens of the Rio Grande Valley in mourning the death of the distinguished former member of the Texas Senate, Raul L. Longoria, who died May 7, 2001, at the age of 80; and

WHEREAS, Raul L. Longoria was born to Andres and Maria Enriquetta Longoria on February 22, 1921, in the small community of La Grulla, in Starr County, where his family had originally settled in 1749; and

WHEREAS, A veteran of World War II, Raul L. Longoria served his country valiantly in the European Theater of Operations from 1942 to 1946; and

WHEREAS, Upon returning from his tour of duty, Raul L. Longoria attended The University of Texas School of Law at Austin, where he graduated in 1952 with a Juris Doctor Degree; and

WHEREAS, A longtime resident of the Rio Grande Valley, Raul L. Longoria began a career in public office in 1960 when he was elected to the Texas House of Representatives and served six terms until 1972 when he was elected to the Texas Senate and served until 1981 when he resigned to become Judge of the 139th Judicial District in Hidalgo County until his retirement in 1994; and

WHEREAS, As a State Representative and Senator, Raul L. Longoria was widely respected as a champion of Hispanic causes; in particular, he fought to improve public and higher education in the Rio Grande Valley; he also took a strong interest in the welfare and protection of migrant workers; and

WHEREAS, During his legislative career he sponsored legislation in the areas of labor, health, and education, and served on key committees, including the powerful House Appropriations Committee and the Senate Finance Committee; and

WHEREAS, While in the Texas Senate, Raul L. Longoria was elected President Pro Tempore by his Senate colleagues and served as "Governor for a Day" on December 9, 1978; in 1979, he and 11 other loyal Democratic Texas Senators participated in the celebrated flight of the "Killer Bees" to block passage of legislation which would have impacted the 1980 presidential primary election; and

WHEREAS, Raul L. Longoria's determined legislative efforts afforded thousands of Texans the opportunity for economic and social advancement, and he will be remembered by future generations as an outstanding South Texas civil rights leader and a dedicated public servant; and

WHEREAS, In recognition of all that he accomplished, a major Hidalgo County boulevard was renamed in his honor, and the "Raul L. Longoria Elementary School" was named and dedicated in his honor in the Pharr-San Juan-Alamo School District; and

WHEREAS, Judge Raul L. Longoria gained stature as a legend whose name and memory will be a part of the living history of the Rio Grande Valley; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby extend sincere condolences to the family of Judge Raul L. Longoria: his wife of 53 years, Earlene M. Longoria; his sons and daughters-in-law, Sam and Cher Longoria and Roy and Margot Longoria; his daughters, Janiece Longoria, Elaine L. Fannin, and Cecilia J. Longoria; his four grandchildren, Martin Longoria, Eduardo Longoria, and Elizabeth and Andrew Chambers; his sister, Sylvia Codina and her husband, Luis; his brother, Henry Longoria; and his sister-in-law, Gladys Longoria; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the family of Judge Raul L. Longoria as an expression of deepest sympathy and appreciation for his service to our country and to the State of Texas from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of the Honorable Raul L. Longoria, may he rest in peace.

TRUAN	MADLA
BARRIENTOS	MONCRIEF
ELLIS	WHITMIRE
LUCIO	ZAFFIRINI

The resolution was again 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.

The resolution was previously adopted on Monday, May 21, 2001.

Senator Truan was recognized and introduced to the Senate family members of Judge Raul Longoria: his son, Roy Longoria, and wife, Margot, and their son, Eduardo; his son, Sam Longoria and wife, Cher, and their son, Martin; his daughter, Janiece Longoria, accompanied by Steve Lasher; his daughter, Elaine L. Fannin; and his daughter, Cecilia J. Longoria.

The Senate welcomed its guests and extended its sympathy.