SENATE JOURNAL

SEVENTY-EIGHTH LEGISLATURE — THIRD CALLED SESSION

AUSTIN, TEXAS

PROCEEDINGS

NINTH DAY

(Thursday, September 25, 2003)

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, Averitt, Barrientos, Brimer, Carona, Deuell, Duncan, Ellis, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Ratliff, Shapleigh, Staples, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

Absent-excused: Bivins, Shapiro.

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

The Reverend Timothy B. Tutt, United Christian Church, Austin, offered the invocation as follows:

> Great God of the universe, namer of the stars, life-giver to galaxy upon galaxy, amid the wars and worries of our world, hear this simple prayer that is lifted up in this corner of Your cosmos called the chamber of the Texas Senate. For life is not always easy here in the Texas Senate, O God, and so we pray for the women and men who serve here and, really, our prayer is for all people everywhere. Deal with us gently, O God, that we may deal gently with others. Speak to us kindly, O God, that we may speak kindly to others. Walk with us graciously, O God, that we may walk graciously with others. This is our prayer on this day, O God. Hear us please. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of yesterday be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

LEAVES OF ABSENCE

On motion of Senator Whitmire, Senator Bivins was granted leave of absence for today on account of important business.

On motion of Senator Whitmire, Senator Shapiro was granted leave of absence for today on account of important business.

RESOLUTIONS SIGNED

The President announced the signing of the following enrolled resolutions in the presence of the Senate: **SCR 2**, **HCR 9**.

SENATE RESOLUTION 53

Senator Averitt offered the following resolution:

WHEREAS, The Waco Veterans Affairs Hospital serves every county in Texas and is the only Veterans Affairs hospital in the state that provides psychiatric care as its principal function; and

WHEREAS, The federal government has invested significantly in the Waco Veterans Affairs Hospital, spending $12.4 million to enhance a facility for acute psychiatric care and $11.3 million to renovate and modernize a psychiatric-geriatric building; and

WHEREAS, State government also invested in the hospital by locating a Texas Veterans Commission regional office near the facility to provide integrated services to the large concentration of veterans in the area; and

WHEREAS, Operating 15 rehabilitation beds to serve blind veterans, the Waco Veterans Affairs Hospital is known as a national referral facility for blind rehabilitation; and

WHEREAS, In the past year alone, the hospital treated 1,800 psychiatric, posttraumatic stress disorder, and blind rehabilitation patients, plus another 17,000 outpatients for medical and psychiatric conditions, attesting to its importance to Texas veterans throughout the state; and

WHEREAS, Enjoying strong community support, the Waco Veterans Affairs Hospital annually contributes an estimated $203 million to the local economy and directly and indirectly accounts for approximately 2,000 jobs throughout Central Texas; and

WHEREAS, A Veterans Affairs proposal to close the Waco facility would interrupt the seamless delivery of services to many Texas veterans and do great harm to the local economy; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 78th Legislature, 3rd Called Session, hereby oppose any proposal to close the Waco Veterans Affairs Hospital and urge concerned Texans and veterans to attend related hearings to lend their support for the hospital and its retention.

The resolution was read and was adopted without objection.

CONCLUSION OF MORNING CALL

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

COMMITTEE SUBSTITUTE HOUSE BILL 1 ON SECOND READING

The President laid before the Senate **CSHB 1**, sponsored by Senator Nelson, at this time on its second reading:

CSHB 1, Relating to the dates of certain elections, the procedures for canvassing the ballots for an election, and the counting of certain ballots voted by mail.

The bill was read second time.

Senator West offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 1** by adding the following appropriately numbered section and by renumbering the remaining sections as appropriate:

SECTION ____. (a) Chapter 276, Election Code, is amended by adding Section 276.011 to read as follows:

Sec. 276.011. CIVIL ACTION: DILUTION OF VOTING RIGHTS. (a) A law of this state or a regulation, rule, order, ordinance, practice, or procedure of a political subdivision of this state may not be enacted, adopted, or applied in a manner that results in the denial or abridgement of the right of an individual to vote on account of race, color, ethnicity, or membership in a language minority group. For purposes of this section, an individual's ethnicity includes the individual's membership in a group that shares a common primary language.

(b) An individual affected by a law or other measure described by Subsection (a) may bring a civil action to enforce Subsection (a). A violation of Subsection (a) is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in this state or a political subdivision of this state are not equally open to participation by individuals of a particular race, color, ethnicity, or language minority group, in that the members of that group have less opportunity than other members of the electorate to participate in the political process or to elect representatives of their choice.

(c) In determining whether a political process is not equally open to individuals of a particular race, color, ethnicity, or language minority group, a court may not consider the citizenship of members of the group, including considering the citizenship in any manner that excludes individuals who are not citizens from an estimate of the potential voting strength of the group.

(d) An action under this section may be brought only:

(1) by a resident of the state in a district court in the county in which the person resides, for a state law; or

(2) by a resident of the political subdivision in a district court in a county in which the political subdivision is located, for a regulation, rule, order, ordinance, practice, or procedure of a political subdivision.

(e) A finding of the district court under this section may be appealed in the same manner as provided by general law for other civil cases in district courts.

(b) This section takes effect February 1, 2004.

The floor amendment was read.

On motion of Senator Nelson, Floor Amendment No. 1 was tabled by the following vote: Yeas 17, Nays 12.

Yeas: Averitt, Brimer, Carona, Deuell, Duncan, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Nelson, Ogden, Ratliff, Staples, Wentworth, Williams.

Nays: Armbrister, Barrientos, Ellis, Gallegos, Hinojosa, Lucio, Madla, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

Absent-excused: Bivins, Shapiro.

POINT OF ORDER

Senator Barrientos raised a point of order against further consideration of **CSHB 1** stating that it is in violation of Senate Rule 7.15 and Section 30, Article III of the Texas Constitution and that the bill contains two subjects that are not germane.

POINT OF ORDER RULING

The President stated that **CSHB 1** is not in violation of either Senate Rule 7.15 or Section 30, Article III of the Texas Constitution and the point of order was respectfully overruled.

CSHB 1 was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Zaffirini asked to be recorded as voting "Nay" on the passage of **CSHB 1** to third reading.

COMMITTEE SUBSTITUTE
HOUSE BILL 7 ON SECOND READING

The President laid before the Senate **CSHB 7**, sponsored by Senator Ogden, at this time on its second reading:

CSHB 7, Relating to the organization, board membership, and functions of certain governmental agencies and to the transfer of certain functions to other governmental agencies.

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 7**, Senate committee printing, in ARTICLE 5 of the bill, by adding a new section, appropriately numbered, as follows:

SECTION 5.____. (a) The commissioner of the Texas Department of Insurance shall study the conditions relating to medical liability insurance in this state. The commissioner shall compile information relating to the insurers providing professional liability insurance in this state, including information relating to:

(1) new professional liability insurance providers entering into business in this state since September 13, 2003; and

(2) professional liability insurance rates for physicians and other health care providers, including which insurers have altered rates from the rates the provider charged before September 13, 2003.

(b) The commissioner shall submit quarterly reports of its findings to each member of the legislature on the first day of November, February, May, and August.

(c) This section expires January 1, 2005.

The floor amendment was read.

Senator Ogden offered the following amendment to the amendment:

Floor Amendment No. 1A

Amend Floor Amendment No. 1 to **CSHB 7** by striking proposed subsections (a) and (b) and inserting the following new subsections (a) and (b):

(a) The commissioner of the Texas Department of Insurance shall compile information relating to the insurers writing medical professional liability insurance in this state, including information relating to:

(1) insurers newly writing medical professional liability insurance in this state on and after September 13, 2003; and

(2) medical professional liability insurance rates for physicians and other health care providers as defined in Chapter 74 of the Civil Practice and Remedies Code, including which insurers have changed their rates on or after September 13, 2003.

(b) The commissioner shall report on a quarterly basis to the governor, the lieutenant governor, the speaker of the house of representatives, and each member of the legislature on the information obtained under this section. Such reports shall be made no later than the fifth day of November, February, May, and August.

The amendment to the amendment was read and was adopted without objection.

Question recurring on the adoption of Floor Amendment No. 1 as amended, the amendment as amended was adopted without objection.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSHB 7** in ARTICLE 7 of the bill by adding the following appropriately numbered SECTIONS to the bill and renumbering the other SECTIONS of ARTICLE 7 of the bill appropriately:

SECTION 7. ____. (a) For purposes of this section, an institution of higher education, as referenced in Section 7.01 of this article, has the meaning assigned by Section 61.003, Education Code.

(b) Section 56.465(a), Education Code, as added by Chapter 779, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(a) The governing board of each institution of higher education shall cause to be set aside five percent of the amount of the tuition charged to a resident undergraduate student at the institution under Section 54.0513 [~~that is~~] in excess of $46 per semester credit hour. The amount of a student's tuition set aside under this subsection is considered a part of the amount required to be set aside from that tuition under Section 56.011 [~~the amount that would have been charged to the student under that section for the same semester or term in the 2002-2003 academic year~~].

(c) The change in law made by this section to Section 56.465(a), Education Code, applies only to a semester or term that begins on or after the effective date of this Act.

SECTION 7. ____. Section 8.02, Chapter 1266, Acts of the 78th Legislature, Regular Session, 2003, is amended by adding Subsection (f-1) to read as follows:

(f-1) In its review, the committee shall evaluate whether students enrolled in private and independent institutions of higher education should remain eligible to receive Texas B-On-time loans under Subchapter Q, Chapter 56, Education Code. The committee shall include the results of its evaluation in the report required by Subsection (i) of this section.

The floor amendment was read.

On motion of Senator Ogden and by unanimous consent, Floor Amendment No. 2 was withdrawn.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSHB 7**, Senate committee printing, in SECTION 9.01 of the bill, on page 10, lines 29 and 30, between "the governor," and "the speaker of the house of representatives" by inserting "the lieutenant governor,".

The floor amendment was read and was adopted without objection.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 4

Amend **CSHB 7** by striking SECTION 15.05 of the bill (page 16, line 50, through page 17, line 37, Senate committee printing) and substituting the following:

SECTION 15.05. Section 1575.004, Insurance Code, as amended by Chapter 1231, Chapter 201, and Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

Sec. 1575.004. DEFINITION OF RETIREE. (a) In this chapter, "retiree" means:

(1) an individual not eligible for coverage under a plan provided under Chapter 1551 or 1601 who:

(A) is at least 65 years of age and has taken a service retirement under the Teacher Retirement System of Texas with at least 10 years of service credit in the system, which may include up to five years of military service credit, but which may not include any other service credit purchased for equivalent or special service credit [~~for actual service in public schools in this state~~]; [~~or~~]

(B) was employed in actual service in public schools in this state during or before the 2003-2004 school year and at the time of retirement meets the requirements for eligibility as a retiree as those requirements existed on August 31, 2004;

(C) purchased equivalent or special service credit, and:

(i) had that service credited on or before August 31, 2003;

(ii) retires on or before August 31, 2009;

(iii) at the time of retirement, meets the requirements for eligibility for the group program for coverage as a retiree as those requirements existed on August 31, 2004, including using up to five years of out-of-state service toward retiree eligibility; and

(iv) has taken a service retirement under the Teacher Retirement System of Texas without reduction for early age;

(D) has taken a service retirement under the Teacher Retirement System of Texas and who has at least 10 years of service credit in the system, which may include up to [~~for actual public service in the public schools in this state or has at least five years of service credit for actual public service in the public schools in this state and has~~] five years of military service credit but which may not include any other service credit purchased for equivalent or special service credit [~~credited in the Teacher Retirement System of Texas~~], and the sum of the individual's age and amount of service credit described by this paragraph [~~earned for service in the public schools of this state~~] equals or exceeds the number 80; or

(E) has taken a service retirement under the Teacher Retirement System of Texas on or before August 31, 2004, and who is enrolled in the group program on August 31, 2004; or

(2) an individual who:

(A) has taken a disability retirement under the Teacher Retirement System of Texas; and

(B) is entitled to receive monthly benefits from the Teacher Retirement System of Texas.

(b) Each year of service credit in the system that an individual would have received but for the individual's participation in the deferred retirement option plan under Subchapter I, Chapter 824, Government Code, is considered a year of service credit solely for the purpose of meeting the definition of "retiree" under Subsection (a)(1)(A) or (D).

(c) In this section, "public school" has the meaning assigned by Section 821.001, Government Code.

The floor amendment was read and was adopted without objection.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 5

Amend **CSHB 7**, Senate committee printing, in SECTION 16.01 of the bill, as follows:

(1) On page 20, lines 15-16, in Section 447.010(b), Government Code, between "consumption levels through the use of cost-effective," and "fuel-saving technologies", insert "proven";

(2) On page 20, lines 30-31, in Section 447.010(e), Government Code, between "A state agency may purchase cost-effective" and "fuel-saving technologies", insert "proven";

(3) On page 21, lines 13-14, in Section 447.011(f), Government Code, between "The Texas Commission on Environmental Quality," and "The University of Texas Center for Transportation Research", insert "the Texas Transportation Institute,";

(4) On page 21, line 40, in Section 447.011(j), Government Code, strike "September 1, 2004.", and insert "January 1, 2005."

The floor amendment was read and was adopted without objection.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 6

Amend **CSHB 7**, Senate committee printing, in SECTION 17.01 on page 22 of the bill, Sec. 39.132(b), Education Code, as follows:

(1) On line 45, strike "shall" and insert "may"; and

(2) Strike lines 47-50.

The floor amendment was read.

Senator Shapleigh moved to table Floor Amendment No. 6.

The motion to table was lost by the following vote: Yeas 11, Nays 18.

Yeas: Barrientos, Ellis, Gallegos, Hinojosa, Lucio, Madla, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

Nays: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Nelson, Ogden, Ratliff, Staples, Wentworth, Williams.

Absent-excused: Bivins, Shapiro.

Question recurring on the adoption of Floor Amendment No. 6, the amendment was adopted by a viva voce vote.

RECORD OF VOTES

Senators Barrientos, Hinojosa, Gallegos, and Shapleigh asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 6

Floor Amendment No. 7 was not offered.

Floor Amendment No. 8 was not offered.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 29

Amend **CSHB 7** by striking Art. 22 and substituting the following appropriately numbered article to read as follows and renumbering subsequent articles accordingly:

ARTICLE 22. REVIEW OF CERTAIN TAX SETTLEMENTS

SECTION ____.01. Chapter 321, Government Code, is amended by adding Section 321.0138 to read as follows:

Sec. 321.0138. REVIEW OF CERTAIN STATE TAX SETTLEMENTS. (a) Except as provided by Subsection (b), this section applies to a settlement entered into by the comptroller under Section 111.101 or 111.102, Tax Code, of:

(1) a claim for a tax, a penalty, or interest imposed by Title 2, Tax Code, if:

(A) the amount the taxpayer is required to pay under the settlement is more than 25 percent less than the amount the comptroller originally claimed the taxpayer owed before the date of the settlement; and

(B) the amount the comptroller originally claimed the taxpayer owed before the date of the settlement exceeds $25,000;

(2) a claim for a refund or credit of a tax, a penalty, or interest imposed by Title 2, Tax Code, if:

(A) the amount of the refund or credit under the settlement exceeds $25,000; and

(B) the amount of the refund or credit under the settlement is more than 25 percent greater than the amount of the refund or credit that the comptroller originally claimed the taxpayer was entitled to receive; or

(3) a taxpayer suit under Chapter 112, Tax Code, if:

(A) the amount to be paid, refunded, or credited to the taxpayer under the settlement exceeds $25,000; and

(B) the amount to be paid, refunded, or credited under the settlement is more than 25 percent greater than the amount of the payment, refund, or credit that the comptroller originally claimed the taxpayer was entitled to receive.

(b) This section does not apply to an agreed settlement that results from an order issued by a court.

(c) The legislative audit committee shall appoint not fewer than five nor more than seven staff members of the state auditor's office to an oversight committee to review tax settlements to which this section applies.

(d) Each month, the comptroller shall send to the oversight committee information relating to tax settlements to which this section applies that the comptroller entered into during the previous month.

(e) Notwithstanding any other law, in reviewing a tax settlement, the oversight committee is entitled to access to information related to the settlement to the same extent the state auditor would be entitled under Section 321.013 if the information were in a department or entity that is subject to audit. In accordance with Section 321.013(h), neither the oversight committee nor the state auditor may conduct audits of private entities concerning the collection or remittance of taxes or fees to this state.

(f) A review by the oversight committee under this section is considered an audit for purposes of the application of Section 552.116, relating to confidentiality of audit working papers, and a report prepared by the oversight committee is considered to be an audit working paper. Information obtained or possessed by the oversight committee, state auditor, or legislative audit committee that is confidential under law when in the possession of the comptroller remains confidential while in the possession of the oversight committee, state auditor, or legislative audit committee.

(g) The oversight committee shall report to the legislative audit committee the results of the oversight committee's reviews. The legislative audit committee shall determine the manner in which the oversight committee shall make the report.

(h) Except as provided by Subsection (e), this section does not affect any other law relating to confidentiality of information relating to tax information, including Sections 111.006, 151.027, and 171.206, Tax Code.

SECTION ____.02. This article takes effect February 1, 2004.

The floor amendment was read.

Senator Armbrister offered the following amendment to the amendment:

Floor Amendment No. 29A

Amend Floor Amendment No. 29 to **CSHB 7** by striking the text of the amendment and substituting the following:

Amend **CSHB 7** by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES accordingly:

ARTICLE ____. INTEGRITY AND DISCLOSURE IN THE STATE TAX SYSTEM

SECTION ____.01. Chapter 321, Government Code, is amended by adding Section 321.0138 to read as follows:

Sec. 321.0138. REVIEW OF STATE TAX SETTLEMENTS AND OTHER DECISIONS. (a) This section applies to:

(1) a settlement of a claim for a tax, refund, or credit of a tax, penalty, or interest imposed by Title 2, Tax Code;

(2) a settlement of a taxpayer suit under Chapter 112, Tax Code; or

(3) any circumstance in which a taxpayer received a warrant, offset, check, payment, or credit from the comptroller or comptroller's office arising from the filing of a tax return with the state.

(b) The state auditor and the committee shall review the comptroller's records of all tax refunds, credits, payments, warrants, offsets, checks, and settlements for the preceding six years from the effective date of this section. The state auditor and the committee may review the comptroller's records of all tax refunds, credits, payments, warrants, offsets, checks, and settlements that occur following the effective date of this section. Notwithstanding any other law, in reviewing these tax refunds, credits, payments, warrants, offsets, checks, and settlements, the state auditor and the committee are entitled to access to related information to the same extent they would be entitled under Section 321.013 if the information were in a department or entity that is subject to audit. In accordance with Section 321.013(h), neither the state auditor nor the committee may conduct audits of private entities concerning the collection or remittance of taxes or fees to this state.

(c) Within six months following the effective date of this section, the comptroller shall provide to the state auditor information relating to tax refunds, credits, payments, warrants, offsets, checks, and settlements made in the past six years as requested by the state auditor. Commencing February 1, 2004, on a monthly basis, the comptroller shall provide to the state auditor information designated by the state auditor relating to tax refunds, credits, payments, warrants, offsets, checks, and settlements to which this section applies.

(d) A review by the state auditor under this section is considered an audit for purposes of the application of Section 552.116, relating to confidentiality of audit working papers. Information obtained or possessed by the state auditor or the committee that is confidential under law when in the possession of the comptroller remains confidential while in the possession of the state auditor or committee, except as provided by Subsection (e).

(e) The committee shall determine the manner in which the state auditor shall report information obtained pursuant to Subsection (b). The report may include any information obtained during the review, except that the report may not be formatted in a manner or include any information that discloses or effectively discloses the specific identity of an individual or taxpayer. The report must state the information by category or by numeric pseudonym and may include other information maintained by the Texas Ethics Commission.

(f) Except as provided by Subsection (e), this section does not affect any other law relating to confidentiality of information relating to tax information, including Sections 111.006, 151.027, and 171.206, Tax Code.

(g) This section does not affect any other law relating to release of information for legislative purposes, including Section 552.008, Government Code.

SECTION ____.02. This article takes effect February 1, 2004.

The amendment to the amendment was read and was adopted without objection.

Question recurring on the adoption of Floor Amendment No. 29 as amended, the amendment as amended was adopted without objection.

Floor Amendment No. 9 was not offered.

Floor Amendment No. 10 was not offered.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 11

Amend **CSHB 7** as follows:

(1) On page 2, line 20, strike SECTION 5.01

The floor amendment was read and failed of adoption by the following vote: Yeas 11, Nays 18.

Yeas: Barrientos, Ellis, Gallegos, Hinojosa, Lucio, Madla, Shapleigh, Van de Putte, Wentworth, West, Zaffirini.

Nays: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Nelson, Ogden, Ratliff, Staples, Whitmire, Williams.

Absent-excused: Bivins, Shapiro.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 12

Amend **CSHB 7**, by adding an appropriately numbered new SECTION to the bill and renumbering subsequent SECTIONS accordingly, to read as follows:

SECTION ____. Chapter 31, Insurance Code, is amended by adding Section 31.046, as follows.

"Sec. 31.046. Training Program for Commissioner. (a) Before a person may assume the commissioner's duties and before that person may be confirmed by the senate, the person must complete the training program established under this section.

(b) A training program established under this section shall provide information to the commissioner regarding:

(1) the enabling legislation that created the Department and its policymaking body to which the commissioner is appointed to serve;

(2) the programs operated by the Department;

(3) the role and functions of the Department;

(4) the rules of the Department with an emphasis on the rules that related to disciplinary and investigatory authority;

(5) the current budget for the Department;

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

(7) the requirements of Chapters 551, 552, and 2001, Government Code;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

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

The floor amendment was read and was adopted without objection.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 13

Amend **CSHB 7** by adding the following appropriately numbered SECTIONS to Article 6 of the bill and renumbering existing SECTIONS of the article accordingly:

SECTION 6.__. Section 508.047(b), Government Code, is amended to read as follows:

(b) Except as provided by Article 48.011, Code of Criminal Procedure, the [~~The~~] members of the board are not required to meet as a body to perform the members' duties in clemency matters.

SECTION 6.__. Chapter 48, Code of Criminal Procedure, is amended by adding Article 48.011 to read as follows:

Art. 48.011. MEETINGS: CAPITAL CASE. (a) In a capital case, the members of the Board of Pardons and Paroles shall perform the members' duties in clemency matters by meeting as a body or by participating in a telephone conference call as permitted by Section 551.124, Government Code.

(b) The board shall deliberate privately, but at the conclusion of deliberations each board member shall announce publicly the member's individual decision as to whether to recommend clemency and shall sign the member's name with the member's written recommendation and reasons for that recommendation.

(c) The board shall adopt rules as necessary to implement the requirements of this article.

SECTION 6.__. Section 551.124, Government Code, is amended to read as follows:

Sec. 551.124. BOARD OF PARDONS AND PAROLES. At the call of the presiding officer of the Board of Pardons and Paroles, the board may hold a hearing on clemency matters by telephone conference call. Other than the deliberations of the board, the proceedings at the telephone conference call hearing shall be recorded and made available to the public in the same manner as if the members of the board had met as a body to hold the hearing.

SECTION 6.__. (a) The changes in law made by Sections 6.___-6.___ of this Act apply only to a consideration by the Board of Pardons and Paroles regarding a clemency matter in a capital case that occurs on or after the effective date of this article.

(b) The Board of Pardons and Paroles shall adopt the rules required by Article 48.011(c), Code of Criminal Procedure, as added by this article, not later than March 1, 2004.

The floor amendment was read.

Senator Ellis offered the following amendment to the amendment:

Floor Amendment No. 13A

Amend Floor Amendment No. 13 to **CSHB 7** by striking and inserting the following:

SECTION 6.__. (a) The changes in law made by Sections 6.__-6.__ of this Act apply only to a consideration by the Board of Pardons regarding a clemency matter in a capital case that occurs on or after the [~~effective date of this article~~] March 1, 2005.

The amendment to the amendment was read and was adopted without objection.

Question recurring on the adoption of Floor Amendment No. 13 as amended, the amendment as amended was adopted without objection.

Senator Janek offered the following amendment to the bill:

Floor Amendment No. 14

Amend **CSHB 7** as follows:

(1) In ARTICLE 9, SECTION 9.01, add an appropriately lettered new subsection to read as follows and appropriately reletter subsequent subsections of that SECTION:

( ) The joint committee shall also consider permits for grease trap waste facilities authorized by Chapter 596, Acts of the 78th Legislature, Regular Session, 2003.

(2) In ARTICLE 9, add appropriately numbered SECTION to read as follows and appropriately renumber subsequent SECTIONS of that ARTICLE:

SECTION 9.____. Section 2, Chapter 596, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

Sec. 2. (a) The Texas Commission on Environmental Quality shall:

(1) not later that December 1, [~~November 1,~~] 2003:

(A) adopt any rules necessary for the implementation of this Act; and

(B) notify any person known by the commission to be engaged in the business of composting grease trap waste to submit an application for a permit under Section 361.428(d), Health and Safety Code, as added by this Act; and

(2) not later than September 1, 2005 [~~January 1, 2004~~], begin issuing permits for the commercial composting of grease trap waste under Sections 361.428(d) and (e), Health and Safety Code, as added by this Act.

(b) This Act does not prohibit a person who is engaged in the business of composting grease trap waste on the effective date of this Act from continuing to engage in that business if the person:

(1) submits an application for a permit under Section 361.428(d), Health and Safety Code, as added by this Act, not later than the 30th day after receiving notice from the Texas Commission on Environmental Quality under Subsection (a)(1)(B) of this section; and

(2) receives the permit from the commission on or before June 1, 2007 [~~2004~~].

The floor amendment was read.

Senator Madla offered the following amendment to the amendment:

Floor Amendment No. 14A

Amend Floor Amendment No. 14 by Janek to **CSHB 7** on page 2, line 12, by striking "June 1, 2007" and substituting "September 1, 2005".

The amendment to the amendment was read and was adopted without objection.

Senator Shapleigh offered the following amendment to the amendment:

Floor Amendment No. 14B

Amend Floor Amendment No. 14 by Janek to **CSHB 7** (page 14 of the amendments package) by adding the following at the end of that amendment:

(3) Add the following article, appropriately numbered:

ARTICLE ____. LIQUID WASTE MANAGEMENT

SECTION __.01. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.034 to read as follows:

Sec. 361.034. RECORDS AND MANIFESTS REQUIRED FOR CERTAIN LIQUID WASTES. (a) The commission by rule shall require a person who generates, collects, conveys, transports, processes, stores, or disposes of sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste, or grease trap waste to keep records and use a uniform manifest as prescribed by commission rule to ensure that the waste is transported to an appropriate processing, storage, or disposal facility or site permitted or authorized for that purpose.

(b) The rules must require the person who generates the waste, the person who transports the waste, and the person who disposes of the waste each to retain, for not less than three years, a copy of a transportation manifest that records the generator, transporter, and disposal site and method.

(c) The rules must require that aggregate amounts of waste recorded on the manifests required under this section match the amounts of waste reported to the commission annually. The commission may require copies of manifests to be submitted with reports to the commission or at other times.

SECTION __.02. The Texas Commission on Environmental Quality shall adopt rules under Section 361.034, Health and Safety Code, as added by this article, as soon as practicable so that the rules take effect not later than July 1, 2004.

SECTION __.03. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect February 1, 2004.

The amendment to the amendment was read and failed of adoption by the following vote: Yeas 12, Nays 17.

Yeas: Barrientos, Ellis, Gallegos, Hinojosa, Janek, Lucio, Madla, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

Nays: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Estes, Fraser, Harris, Jackson, Lindsay, Nelson, Ogden, Ratliff, Staples, Wentworth, Williams.

Absent-excused: Bivins, Shapiro.

(Senator Armbrister in Chair)

Question recurring on the adoption of Floor Amendment No. 14 as amended, the amendment as amended was adopted by a viva voce vote.

Senator Estes offered the following amendment to the bill:

Floor Amendment No. 15

Amend **CSHB 7** in ARTICLE 9 of the bill by adding the following appropriately numbered section and renumbering the subsequent sections of the bill accordingly:

SECTION 9.____. Rules adopted by the Texas Commission on Environmental Quality under Section 26.040, Water Code, before the effective date of this Act are validated as of the dates they were adopted and remain valid until they are modified or repealed by the commission.

The floor amendment was read.

On motion of Senator Estes, Floor Amendment No. 15 was temporarily withdrawn.

Floor Amendment No. 16 was not offered.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 17

Amend **CSHB 7** by striking Section 9.01 of the bill and substituting:

SECTION 9.01. (a) It is the policy of this state to be effective and efficient with public funds, to provide for effective and efficient management of natural resources, to provide for effective and consistent enforcement of state and federal laws, to protect the health and safety of the people of this state, to promote fair economic development, and to serve the people of this state by making the government more visible, accessible, coherent, consistent, and accountable to the people of this state. The legislature finds that the Texas Commission on Environmental Quality's procedures for processing permits is cumbersome, confusing, lengthy, and inefficient for citizens, business, political subdivisions, and the commission and finds that the commission's procedures for assessing and enforcing penalties for noncompliance with state and federal environmental laws may need to be updated and strengthened to deter noncompliance.

(b) The Texas Commission on Environmental Quality's permitting and enforcement processes warrant, and the legislature directs, an in-depth evaluation, including the identification of problems, potential options, and solutions. The evaluation must solicit and consider input from all stakeholders, and the evaluation process must include public hearings and the opportunity for submission of written and oral comments. At least two of the public hearings must be held in affected communities outside the greater Austin area. The solutions identified in the final assessment of the commission's permitting and enforcement processes must ensure that:

(1) all relevant environmental protection standards are maintained at a level that at least equals the current level;

(2) the commission's permitting processes are streamlined;

(3) the commission's permitting processes are user-friendly to citizens and promote sound economic development;

(4) the commission's enforcement procedures and penalties for noncompliance reflect any potential economic benefit to the offender;

(5) the commission's enforcement procedures account for the full cost to human health of noncompliance;

(6) the division of responsibility between the commission and the office of the attorney general is efficient and effectively obtains the maximum degree of environmental compliance possible; and

(7) all stakeholder concerns are considered.

(c) The comptroller of public accounts shall conduct the evaluation and final assessment required by Subsection (b) of this section and shall submit the comptroller's findings not later than December 1, 2004, to the governor, the lieutenant governor, the speaker of the house of representatives, the Texas Commission on Environmental Quality, and the presiding officer of the standing committee of each house of the legislature that has primary jurisdiction over environmental issues.

(d) It is the intent of the legislature to effectuate the appropriate solutions through legislation at the earliest opportunity after receipt of the comptroller's final assessment.

The floor amendment was read.

Senator Shapleigh offered the following amendment to the amendment:

Floor Amendment No. 17A

Amend Floor Amendment No. 17 to **CSHB 7** by striking Section 9.01 of the bill and substituting:

SECTION 9.01. (a) It is the policy of this state to be effective and efficient with public funds, to provide for effective and efficient management of natural resources, to provide for effective and consistent enforcement of state and federal laws, to protect the health and safety of the people of this state, to promote fair economic development, and to serve the people of this state by making the government more visible, accessible, coherent, consistent, and accountable to the people of this state. The legislature finds that the Texas Commission on Environmental Quality's procedures for processing permits is cumbersome, confusing, lengthy, and inefficient for citizens, business, political subdivisions, and the commission and finds that the commission's procedures for assessing and enforcing penalties for noncompliance with state and federal environmental laws may need to be updated and strengthened to deter noncompliance.

(b) The Texas Commission on Environmental Quality's permitting and enforcement processes warrant, and the legislature directs, an in-depth evaluation, including the identification of problems, potential options, and solutions. The evaluation must solicit and consider input from all stakeholders, and the evaluation process must include public hearings and the opportunity for submission of written and oral comments. At least two of the public hearings must be held in affected communities outside the greater Austin area. The solutions identified in the final assessment of the commission's permitting and enforcement processes must ensure that:

(1) all relevant environmental protection standards are maintained at a level that at least equals the current level;

(2) the commission's permitting processes are streamlined;

(3) the commission's permitting processes are user-friendly to citizens and promote sound economic development;

(4) the commission's enforcement procedures and penalties for noncompliance reflect any potential economic benefit to the offender;

(5) the commission's enforcement procedures account for the full cost to human health of noncompliance;

(6) the division of responsibility between the commission and the office of the attorney general is efficient and effectively obtains the maximum degree of environmental compliance possible; and

(7) all stakeholder concerns are considered.

(c) The Texas Commission on Environmental Quality shall conduct the evaluation and final assessment required by Subsection (b) of this section and shall submit the commission's findings not later than December 1, 2004, to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of the standing committee of each house of the legislature that has primary jurisdiction over environmental issues.

(d) It is the intent of the legislature to effectuate the appropriate solutions through legislation at the earliest opportunity after receipt of the final assessment made under Subsection (c) of this section.

The floor amendment was read.

On motion of Senator Shapleigh, Floor Amendment No. 17A was withdrawn.

Question recurring on the adoption of Floor Amendment No. 17, the amendment was temporarily withdrawn.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 18

Amend **CSHB 7** as follows:

(1) Strike SECTION 10.09 of the bill and renumber the subsequent SECTIONS of the bill appropriately (committee printing page 11, line 28 through page 12, line 10).

(2) Strike SECTION 10.19 of the bill and renumber the subsequent SECTIONS of the bill appropriately (committee printing page 13, lines 29-33).

(3) Strike SECTION 10.22 of the bill and renumber the subsequent SECTIONS of the bill appropriately (committee printing page 13, line 57 through page 14, line 9).

The floor amendment was read.

On motion of Senator Shapleigh, Floor Amendment No. 18 was temporarily withdrawn.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 19

Amend **CSHB 7** in SECTION 10.09 by inserting the following immediately following proposed Section 322.016, Government Code:

Sec. 322.0165. PERFORMANCE REVIEW OF INSTITUTIONS OF HIGHER EDUCATION. (a) In this section, "public junior college" and "general academic teaching institution" have the meanings assigned by Section 61.003, Education Code.

(b) The board may periodically review the effectiveness and efficiency of the budgets and operations of:

(1) public junior colleges; and

(2) general academic teaching institutions.

(c) A review under this section may be initiated by the board or at the request of:

(1) the governor; or

(2) the public junior college or general academic teaching institution.

(d) A review may be initiated by a public junior college or general academic teaching institution only at the request of the president of the college or institution or by a resolution adopted by a majority of the governing body of the college or institution.

(e) If a review is initiated by a public junior college or general academic teaching institution, the college or institution shall pay 25 percent of the cost incurred in conducting the review.

(f) The board shall:

(1) prepare a report showing the results of each review conducted under this section;

(2) file the report with:

(A) the chief executive officer of the public junior college or general academic teaching institution that is the subject of the report; and

(B) the governor, the lieutenant governor, the speaker of the house of representatives, the chairs of the standing committees of the senate and of the house of representatives with primary jurisdiction over higher education, and the commissioner of higher education; and

(3) make the entire report and a summary of the report available to the public on the Internet.

The floor amendment was read and was adopted without objection.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 20

Amend **CSHB 7** by adding the following new section, appropriately numbered, and renumbering the subsequent sections accordingly:

SECTION ____. Section 11.064, Education Code, as added by Chapter 249, Acts of the 78th Legislature, Regular Session, 2003, is amended by amending Subsections (a) and (c) and adding Subsections (a-1) and (a-2) to read as followings:

(a) The board of trustees [~~A trustee~~] of an independent school district by resolution adopted by majority vote may require each member of the board to [~~with an enrollment of at least 5,000 students shall~~] file the financial statement required of state officers under Subchapter B, Chapter 572, Government Code, with:

(1) the board of trustees; and

(2) the Texas Ethics Commission.

(a-1) Not later than the 15th day after the date a board of trustees adopts a resolution under Subsection (a), the board shall deliver a certified copy of the resolution to the Texas Ethics Commission.

(a-2) A resolution adopted under Subsection (a) applies beginning on January 1 of the second year following the year in which the resolutions is adopted. A member of a board of trustees that has adopted a resolution under Subsection (a) is not required to include, in a financial disclosure statement under this section, financial activity occurring before January 1 of the year following the year in which the resolution is adopted.

(c) A trustee serving in a school district that has adopted a resolution under Subsection (a) [~~subject to this section~~] commits an offense if the trustee fails to file the statement required by the resolution [~~this section~~]. An offense under this section is a Class B misdemeanor.

SECTION ____. Section. 6.08, Chapter 249, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

The floor amendment was read.

Senator Staples offered the following amendment to the amendment:

Floor Amendment No. 20A

Amend Floor Amendment No. 20 to **CSHB 7**, by striking (c) and inserting new subsection (c) and (d) as follows:

(c) The commissioner may require the members of the board of trustees of an independent school district to file the financial statement required of state officers under Subchapter B, Chapter 572, Government Code in the same manner as a board that has adopted a resolution under subsection (a) upon determining that:

(1) one or more individual board members have failed to comply with disclosure and recusal requirements applicable to school boards under Chapter 171, Local Government Code;

(2) the district financial accounting practices are not adequate to safeguard state and district funds;

(3) the district has not met a standard set by the commissioner in the Financial Accountability Rating System; or

(4) upon a recommendation by the comptroller pursuant to a Texas Performance Review of the district.

(c-1) The commissioner may require filing financial statements under subsection (c) covering no more than three fiscal years and beginning on January 1 of the second year following the finding required under this subsection, but may renew the requirement upon making determining that one or more of the conditions in subsection (c) continue to exist.

(d) A trustee serving in a school district that has adopted a resolution under Subsection (a) [~~subject to this section~~] commits an offense if the trustee fails to file the statement required by the resolution [~~this section~~]. An offense under this section is a Class B misdemeanor.

The amendment to the amendment was read.

POINT OF ORDER

Senator Ogden raised a point of order that Floor Amendment No. 20A was not germane to the body of the bill.

POINT OF ORDER RULING

The Presiding Officer, Senator Armbrister in Chair, ruled that the point of order was well-taken and sustained.

Question recurring on the adoption of Floor Amendment No. 20, the amendment was withdrawn.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 21

Amend **CSHB 7** by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS accordingly:

SECTION ____. (a) Section 152.0215(a), Tax Code, as amended by Section 22, H.B. No. 1365, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(a) Except as provided by this subsection, a [~~A~~] surcharge is imposed on every retail sale, lease, or use of every on-road diesel motor vehicle that is over 14,000 pounds and that is sold, leased, or used in this state. The amount of the surcharge is:

(1) for a vehicle of a model year 1996 or earlier, including a motor home for personal use, [~~is~~] 2.5 percent of the total consideration; and

(2) for a vehicle of a model year 1997 or later, excluding a motor home for personal use, one percent of the total consideration.

(b) This section takes effect on the first day of the first month beginning on or after the earliest date on which this Act may take effect 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 effect before December 1, 2003, this section takes effect December 1, 2003. The comptroller may adopt emergency rules for the implementation of this section.

The floor amendment was read.

On motion of Senator Staples, Floor Amendment No. 21 was withdrawn.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 22

Amend **CSHB 7** as follows:

(1) In ARTICLE 15 of the bill, strike SECTION 15.05 of the bill (page 16, line 50 through page 17, line 37, senate committee printing) and substitute the following:

SECTION 15.05. Section 1575.004, Insurance Code, as amended by Chapters 201, 1231, and 1276, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

Sec. 1575.004. DEFINITION OF RETIREE. (a) In this chapter, "retiree" means:

(1) an individual not eligible for coverage under a plan provided under Chapter 1551 or 1601 who:

(A) is at least 65 years of age and has taken a service retirement under the Teacher Retirement System of Texas with at least 10 years of service credit in the system, which may include up to five years of military service credit, but which may not include any other service credit purchased for equivalent or special service credit [~~for actual service in public schools in this state~~]; [~~or~~]

(B) was employed in actual service in public schools in this state during or before the 2003-2004 school year and at the time of retirement meets the requirements for eligibility as a retiree as those requirements existed on August 31, 2004;

(C) purchased service credit under Chapter 823, Government Code, and:

(i) had that service credited on or before August 31, 2004; and

(ii) at the time of retirement, meets the requirements for eligibility as a retiree as those requirements existed on August 31, 2004, including using up to five years of out-of-state service toward retiree eligibility;

(D) has taken a service retirement under the Teacher Retirement System of Texas and who has at least 10 years of service credit in the system, which may include up to [~~for actual public service in the public schools in this state or has at least five years of service credit for actual public service in the public schools in this state and has~~] five years of military service credit, but which may not include any other service credit purchased for equivalent or special service credit [~~credited in the Teacher Retirement System of Texas~~], and the sum of the individual's age and amount of any service credit in the system [~~earned for service in the public schools of this state~~] equals or exceeds the number 80; or

(E) has taken a service retirement under the Teacher Retirement System of Texas on or before August 31, 2004, and who is enrolled in the group program on August 31, 2004; or

(2) an individual who:

(A) has taken a disability retirement under the Teacher Retirement System of Texas; and

(B) is entitled to receive monthly benefits from the Teacher Retirement System of Texas.

(b) In this section, "public school" has the meaning assigned by Section 821.001, Government Code.

(2) In ARTICLE 15 of the bill, strike SECTION 15.08 of the bill (page 17, line 59 through page 18, line 6, senate committee printing).

(3) In SECTION 15.10 of the bill, strike Subsection (b) of that SECTION (page 19, lines 43-44, senate committee printing) and substitute the following:

(b) Section 15.05 of this article takes effect September 1, 2004.

The floor amendment was read.

On motion of Senator Shapleigh, Floor Amendment No. 22 was withdrawn.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 23

Amend **CSHB 7** as follows:

(1) In ARTICLE 15 of the bill, strike SECTION 15.05 of the bill (page 16, line 50 through page 17, line 37, senate committee printing) and substitute the following:

SECTION 15.05. Section 1575.004, Insurance Code, as amended by Chapters 201, 1231, and 1276, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

Sec. 1575.004. DEFINITION OF RETIREE. (a) In this chapter, "retiree" means:

(1) an individual not eligible for coverage under a plan provided under Chapter 1551 or 1601 who:

(A) is at least 65 years of age and has taken a service retirement under the Teacher Retirement System of Texas with at least 10 years of service credit in the system, which may include up to five years of military service credit, but which may not include any other service credit purchased for equivalent or special service credit [~~for actual service in public schools in this state~~]; [~~or~~]

(B) was employed in actual service in public schools in this state during or before the 2003-2004 school year and at the time of retirement meets the requirements for eligibility as a retiree as those requirements existed on August 31, 2004;

(C) purchased service credit under Chapter 823, Government Code, and:

(i) had that service credited on or before August 31, 2004; and

(ii) at the time of retirement, meets the requirements for eligibility as a retiree as those requirements existed on August 31, 2004, including using up to five years of out-of-state service toward retiree eligibility;

(D) has taken a service retirement under the Teacher Retirement System of Texas and who has at least 10 years of service credit in the system, which may include up to [~~for actual public service in the public schools in this state or has at least five years of service credit for actual public service in the public schools in this state and has~~] five years of military service credit, but which may not include any other service credit purchased for equivalent or special service credit [~~credited in the Teacher Retirement System of Texas~~], and the sum of the individual's age and amount of any service credit in the system [~~earned for service in the public schools of this state~~] equals or exceeds the number 80; or

(E) has taken a service retirement under the Teacher Retirement System of Texas on or before August 31, 2004, and who is enrolled in the group program on August 31, 2004; or

(2) an individual who:

(A) has taken a disability retirement under the Teacher Retirement System of Texas; and

(B) is entitled to receive monthly benefits from the Teacher Retirement System of Texas.

(b) In this section, "public school" has the meaning assigned by Section 821.001, Government Code.

The floor amendment was read and failed of adoption by the following vote: Yeas 14, Nays 15.

Yeas: Averitt, Barrientos, Carona, Ellis, Gallegos, Hinojosa, Lucio, Madla, Ratliff, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

Nays: Armbrister, Brimer, Deuell, Duncan, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Nelson, Ogden, Staples, Wentworth, Williams.

Absent-excused: Bivins, Shapiro.

Question — Shall **CSHB 7** as amended be passed to third reading?

AT EASE

The Presiding Officer at 1:34 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

IN LEGISLATIVE SESSION

Senator Armbrister at 1:47 p.m. called the Senate to order as In Legislative Session.

Question — Shall **CSHB 7** as amended be passed to third reading?

Senator Janek offered the following amendment to the bill:

Floor Amendment No. 24

Amend **CSHB 7** in ARTICLE 19 of the bill by adding the following section to that article, appropriately numbered, and renumbering subsequent sections of that article accordingly:

SECTION 19.____. (a) Section 11.23, Tax Code, is amended by adding Subsection (j-1) to read as follows:

(j-1) Medical Center Development in Populous Counties. In a county described by Section 201.1055(1), Transportation Code, all real and personal property owned by a nonprofit corporation, as defined in the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), and held for use in the development or operation of a medical center area or areas in which the nonprofit corporation has donated land for a state medical, dental, or nursing school, and for other hospital, medical, educational, or nonprofit uses and uses reasonably related thereto, or for governmental or public purposes, including the relief of traffic congestion, and not leased or otherwise used with a view to profit, is exempt from all ad valorem taxation as though the property were, during that time, owned and held by the state for health and educational purposes. In connection with the application or enforcement of a deed restriction or a covenant related to the property, a use or purpose described in this subsection shall also be considered to be a hospital, medical, or educational use, or a use that is reasonably related to a hospital, medical, or educational use.

(b) Section 11.43(c), Tax Code, as amended by Chapter 407, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(c) An exemption provided by Section 11.13, 11.17, 11.18, 11.182, 11.183, 11.19, 11.20, 11.21, 11.22, 11.23(h), [~~or~~] (j), or (j-1), 11.29, 11.30, or 11.31, once allowed, need not be claimed in subsequent years, and except as otherwise provided by Subsection (e), the exemption applies to the property until it changes ownership or

the person's qualification for the exemption changes. However, the chief appraiser may require a person allowed one of the exemptions in a prior year to file a new application to confirm the person's current qualification for the exemption by delivering a written notice that a new application is required, accompanied by an appropriate application form, to the person previously allowed the exemption.

(c) This section takes effect on the 91st day after the last day of the legislative session and applies only to the ad valorem taxation of property for a tax year that begins on or after January 1, 2004.

The floor amendment was read.

POINT OF ORDER

Senator Ogden raised a point of order that Floor Amendment No. 24 was not germane to the body of the bill.

On motion of Senator Ogden, the point of order was withdrawn.

On motion of Senator Janek, Floor Amendment No. 24 was withdrawn.

Senator Jackson offered the following amendment to the bill:

Floor Amendment No. 25

Amend **CSHB 7** in Article 20, page 57, line 25 to amend Section 28.13, Alcohol Beverage Code, by adding subsections (c) and (d) as follows:

SECTION 20.02. Section 28.13, Alcoholic Beverage Code, is amended by adding subsections (c) and (d) to read as follows:

(c) ~~A permit for a boat is inoperative in a dry area.~~ Notwithstanding section 28.13(a)(2), a permit may be issued to a boat regularly used for voyages in international waters regardless of whether the sale of mixed beverages is lawful in the area of the home port and any permittee or licensee having authority to deliver alcoholic beverages to a mixed beverage permittee within the county where the licensed premises is located may deliver alcoholic beverages purchased by the holder of such a permit.

(d) Those provisions of Section 109.53 of this code relating to residency requirements and compliance with Texas laws of incorporation do not apply to the holders of a mixed beverage permit under this section.

SECTION 20.03. (a) Except as otherwise provided by this section, this article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect on the 91st day after the last day of the legislative session.

The floor amendment was read and was adopted without objection.

Senator Madla offered the following amendment to the bill:

Floor Amendment No. 26

Amend **CSHB 7** (Senate committee printing) on page 23, line 23-51 by inserting new SECTIONS 20.02, 20.03, and 20.04 as follows:

SECTION 20.02. Section 107.12, Alcoholic Beverage Code is amended to read as follows:

Sec. 107.12. DIRECT SHIPMENT OF WINE. Notwithstanding Section 107.07, a person who purchases wine from [~~while at~~] a winery located in this state may ship or cause to be shipped the wine to the person's residence if the winery verifies that the person purchasing the wine is 21 years of age or older. The person must be present when the wine is delivered to the person's residence.

SECTION 20.03. Subsection (a) Section 110.53, Alcoholic Beverage Code, is amended to read as follows:

(a) A person who purchases wine from a winery in this state may ship the wine to a package store that participates in the program. On receipt of the wine, the package store shall notify the purchaser that the wine is available to be picked up by the purchaser at the package store or shipped to the purchaser by the package store [~~in accordance with:~~

[~~(1) Section 107.12, if the person is physically present at the winery; or~~

[~~(2) this section, if the person is not physically present at the winery.~~

SECTION 20.04. Subsection (b), Section 110.53, Alcoholic Beverage Code, is repealed.

The floor amendment was read.

On motion of Senator Madla, Floor Amendment No. 26 was withdrawn.

Senator Brimer offered the following amendment to the bill:

Floor Amendment No. 27

Amend **CSHB 7** by inserting the following appropriately numbered sections in ARTICLE 20 of the bill and renumbering the sections of that article appropriately:

SECTION 20.____. Section 107.12, Alcoholic Beverage Code, is amended to read as follows:

Sec. 107.12. [~~DIRECT~~] SHIPMENT OF WINE TO CONSUMERS. (a) Notwithstanding Section 107.07, a person who purchases wine while at a winery located in this state may ship or cause to be shipped the wine to the person's residence if the winery verifies that the person purchasing the wine is 21 years of age or older. The person must be present when the wine is delivered to the person's residence.

(b) The commission shall adopt rules regulating the shipment of wine to consumers in this state by wineries not located in this state. Rules adopted under this subsection must:

(1) be consistent with the regulation of the shipment of wine to consumers by wineries in this state under Subsection (a) and Chapter 110; and

(2) ensure that out-of-state wineries do not operate under regulations that give out-of-state wineries a competitive advantage over wineries in this state.

SECTION 20.____. Chapter 107, Alcoholic Beverage Code, is amended by adding Section 107.13 to read as follows:

Sec. 107.13. DIRECT SHIPMENT OF ALCOHOLIC BEVERAGES TO CONSUMERS. The commission by rule shall prohibit a person who is not a manufacturer of alcoholic beverages from shipping alcoholic beverages directly to a consumer in this state, except as provided by Section 110.053.

The floor amendment was read.

On motion of Senator Brimer, Floor Amendment No. 27 was withdrawn.

(Senator Lucio in Chair)

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 28

Amend **CSHB 7**, Article No. 20 by adding Section 20.02 to read as follows:

SECTION 20.02. Section 11.641(c), Alcoholic Beverage Code, is amended to read as follows:

(c) A civil penalty, up to and including cancellation of a permit, may not be imposed on the basis of a criminal prosecution in which the defendant was found not guilty, the criminal charges were dismissed, or there has not been final adjudication.

The floor amendment was read and was adopted without objection.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 30

Amend **CSHB 7** on page ____, line ____ by inserting a new section to read as follows:

SECTION ____. (a) Rider 11 under the Fiscal Programs-Comptroller of Public Accounts, Article I, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003 (pages I-37 and I-38), is amended to read as follows:

11. Appropriation of Tax Refunds. As much of the respective taxes, fees, and charges, including penalties or other financial transactions administered or collected by the Comptroller as may be necessary is hereby appropriated and set aside to pay refunds, interest, and any costs and attorney fees awarded in court cases, as provided by law, subject to the following limitations and conditions:

a. Unless another law, or section of this Act, provides a period within which a particular refund claim must be made, funds appropriated herein may not be used to pay a refund claim made under this section after four years from the latest date on which the amount collected or received by the State was due, if the amount was required to be paid on or before a particular date. If the amount was not required to be paid on or before a particular date, a refund claim may not be made after four years from the date the amount was collected or received. A person who fails to make a refund claim within the period provided by law, or this provision, shall not be eligible to receive payment of a refund under this provision.

b. As a specific limitation to the amount of refunds paid from funds appropriated in this Act during the 2004-05 biennium, the Comptroller shall not approve claims or issue warrants for refunds in excess of the amount of revenue estimated to be available from the tax, fee, or other revenue source during the biennium according to the Biennial Revenue Estimate of the Comptroller of Public Accounts used for certification of this Act. Any claim or portion of a claim which is in excess of the limitation established by this subsection "b" shall be presented to the next legislature for a specific appropriation in order for payment to be made. The limitation established by this subsection "b" shall not apply to any taxes or fees paid under protest.

[~~c. None of the funds appropriated by this provision may be expended to pay a refund claim, a final judgement, or a settlement, including any statutory interest thereon or any costs and attorney fees awarded by court order, that is in excess of $250,000. Any claim that is in excess of the limitation established by this subsection "c" shall be presented to the legislature for a specific appropriation in order for payment to be made.~~]

[~~d. None of the funds appropriated by this provision may be expended to pay a refund claim, a final judgment, or a settlement, including any statutory interest thereon or any costs and attorney fees awarded by court order, that would cause the aggregate amount paid to, or on behalf of, an individual or entity pursuant to this provision during the biennium beginning September 1, 2003, to exceed $250,000. Any claim that is in excess of the limitation established by this subsection "d" shall be presented to the legislature for a specific appropriation in order for payment to be made.~~

[~~e. The limitations established by subsection "c" and subsection "d" do not apply to a payment made:~~]

[~~(1) on a final judgment in those cases where the judgment order of the trial court was entered prior to the effective date of this Act,~~]

[~~(2) on a settlement agreement executed prior to the effective date of this Act, or~~]

[~~(3) on a Comptroller's final decision issued prior to the effective date of this Act.~~]

[~~f. For purposes of this provision, "final judgment" means a judgment rendered in a federal court or a court in this state for which an appeal or rehearing, or application therefor, is not pending and for which the time limitations for appeal or rehearing have expired. For the purposes of this provision, a Comptroller's final decision means a decision of the Comptroller which is administratively final and for which limitations has expired for seeking rehearing or filing a lawsuit in court. For the purposes of this provision, a "settlement agreement" must be in writing and signed by the necessary parties. A settlement agreement shall be deemed to be "executed" on the date upon which the last signature of a necessary party is affixed thereon.~~]

[~~g. The payment of a settlement or final judgment may be made only with a complete release from any and all related claims and causes against the State, and in the case of a judgment, the payment may be made only in full satisfaction of that judgment.~~]

[~~h. Subsection "c" and subsection "d" shall not apply to a refund granted pursuant to an informal review under Section 111.1042 of the Tax Code, if that refund claim is filed with the Comptroller no later than 120 days after the original due date of the report for the period for which the refund is claimed.~~]

[~~i. This provision shall not apply to refunds of unclaimed property made pursuant to Title 6 of the Property Code.~~]

[~~j. Except pursuant to this provision, none of the funds appropriated by this Act may be expended to pay a refund of any tax, fee, penalty, charge, or other assessment collected or administered by the Comptroller or to pay a judgment, settlement, or administrative hearing decision, including any statutory interest thereon or any costs and attorney fees awarded by court order, relating to a refund of any tax, fee, penalty, charge or other assessment collected or administered by the Comptroller.~~]

(b) This section applies to a tax refund payable from funds appropriated by H.B. No. 1, Acts of the 78th Legislature, Regular Session, 2003, regardless of whether the refund becomes payable before, on, or after the effective date of this section.

(c) This section takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this section takes effect on the 91st day after the last day of the legislative session.

The floor amendment was read.

On motion of Senator Armbrister, Floor Amendment No. 30 was withdrawn.

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 32

Amend **CSHB 7** by adding the following appropriately numbered SECTIONS to the bill and by renumbering existing SECTIONS accordingly:

SECTION ____. Article 14.06(a), Code of Criminal Procedure, is amended to read as follows:

(a) Except as provided by Subsection (b), in each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall take the person arrested or have him taken without unnecessary delay, but not later than 48 hours after the person is arrested, before the magistrate who may have ordered the arrest, before some magistrate of the county where the arrest was made without an order, or, [~~if necessary~~] to provide more expeditiously to the person arrested the warnings described by Article 15.17 of this Code, before a magistrate in <u>any other</u> [~~a~~] county <u>of this state</u> [~~bordering the county in which the arrest was made~~]. The magistrate shall immediately perform the duties described in Article 15.17 of this Code.

SECTION ____. Article 15.16, Code of Criminal Procedure, is amended to read as follows:

Art. 15.16. HOW WARRANT IS EXECUTED. <u>(a)</u> The officer or person executing a warrant of arrest shall without unnecessary delay take the person or have him taken before the magistrate who issued the warrant or before the magistrate named in the warrant, if the magistrate is in the same county where the person is

arrested. If the issuing or named magistrate is in another county, the person arrested shall without unnecessary delay be taken before some magistrate in the county in which he was arrested.

(b) Notwithstanding Subsection (a), to provide more expeditiously to the person arrested the warnings described by Article 15.17, the officer or person executing the arrest warrant may as permitted by that article take the person arrested before a magistrate in a county other than the county of arrest.

SECTION ____. Article 15.17(a), Code of Criminal Procedure, is amended to read as follows:

(a) In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, [~~if necessary~~] to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in any other [~~a~~] county of this state [~~bordering the county in which the arrest was made~~]. The arrested person may be taken before the magistrate in person or the image of the arrested person may be presented [~~broadcast by closed circuit television~~] to the magistrate by means of an electronic broadcast system. The magistrate shall inform in clear language the person arrested, either in person or through the electronic broadcast system [~~by closed circuit television~~], of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, and of his right to have an examining trial. The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel. If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. If the person arrested is indigent and requests appointment of counsel and if the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel. The magistrate shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall, after determining whether the person is currently on bail for a separate criminal offense, admit the person arrested to bail if allowed by law. An electronic broadcast [~~A closed circuit television~~] system may not be used under this subsection unless the system provides for a two-way communication of image and

sound between the arrested person and the magistrate. A recording of the communication between the arrested person and the magistrate shall be made. The recording shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the recording is made if the person is charged with a misdemeanor or the 120th day after the date on which the recording is made if the person is charged with a felony. The counsel for the defendant may obtain a copy of the recording on payment of a reasonable amount to cover costs of reproduction.

SECTION ____. Article 15.18, Code of Criminal Procedure, is amended to read as follows:

Art. 15.18. ARREST FOR OUT-OF-COUNTY OFFENSE. (a) A person arrested under a warrant issued in a county other than the one in which the person is arrested shall be taken before a magistrate of the county where the arrest takes place or, to provide more expeditiously to the arrested person the warnings described by Article 15.17, before a magistrate in any other county of this state, including the county where the warrant was issued. The magistrate [~~who~~] shall:

(1) take bail, if allowed by law, and, if without jurisdiction, immediately transmit the bond taken to the court having jurisdiction of the offense; or

(2) in the case of a person arrested under warrant for an offense punishable by fine only, accept a written plea of guilty or nolo contendere, set a fine, determine costs, accept payment of the fine and costs, give credit for time served, determine indigency, or, on satisfaction of the judgment, discharge the defendant, as the case may indicate.

(b) Before the 11th business day after the date a magistrate accepts a written plea of guilty or nolo contendere in a case under Subsection (a)(2), the magistrate, if without jurisdiction, shall transmit to the court having jurisdiction of the offense:

(1) the written plea;

(2) any orders entered in the case; and

(3) any fine or costs collected in the case.

(c) The arrested person may be taken before a magistrate by means of an electronic broadcast system as provided by and subject to the requirements of Article 15.17.

SECTION ____. Article 15.19(b), Code of Criminal Procedure, is amended to read as follows:

(b) If a person is arrested and taken before a magistrate in a county other than [~~bordering~~] the county in which the arrest is made [~~under the provisions of Article 15.17(a) of this code~~] and if the person is remanded to custody, the person may be confined in a jail in the county in which the magistrate serves for a period of not more than 72 hours after the arrest before being transferred to the county jail of the county in which the arrest occurred.

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The floor amendment was read.

POINT OF ORDER

Senator Ogden raised a point of order that Floor Amendment No. 32 was not germane to the body of the bill.

POINT OF ORDER RULING

The Presiding Officer, Senator Lucio in Chair, ruled that the point of order was well-taken and sustained.

Senator Jackson offered the following amendment to the bill:

Floor Amendment No. 33

Amend **CSHB 7** (Senate committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering existing ARTICLES of the bill accordingly:

ARTICLE _____. CRIME LABORATORIES

SECTION ____.01. Article 38.35, Code of Criminal Procedure, as amended by Chapter 698, Acts of the 78th Legislature, Regular Session, 2003, is amended by adding Subsection (f) to read as follows:

(f) Subsections (d) and (e) do not apply to:

(1) physical evidence subjected to a forensic analysis by a medical examiner organized and operating under Subchapter B, Chapter 49; or

(2) testimony regarding evidence described by Subdivision (1).

SECTION ____.02. Section 411.0205, Government Code, as added by Chapter 698, Acts of the 78th Legislature, Regular Session, 2003, is amended by adding Subsection (b-1) and amending Subsection (c) to read as follows:

(b-1) The director by rule shall exempt a medical examiner organized and operating under Subchapter B, Chapter 49, Code of Criminal Procedure, from the accreditation process established under Subsection (b).

(c) The director by rule may exempt from the accreditation process established under Subsection (b) a crime laboratory or other entity conducting a forensic analysis of physical evidence for use in criminal proceedings if the director determines that:

(1) independent accreditation is unavailable or inappropriate for the laboratory or entity or the type of examination or test performed by the laboratory or entity;

(2) the type of examination or test performed by the laboratory or entity is admissible under a well-established rule of evidence or a statute other than Article 38.35, Code of Criminal Procedure; [~~and~~]

(3) the type of examination or test performed by the laboratory or entity is routinely conducted outside of a crime laboratory or other applicable entity by a person other than an employee of the crime laboratory or other applicable entity;

(4) the laboratory or entity is independently accredited or certified by a national organization that regularly accredits or certifies competency to practice in the science or discipline associated with the type of examination or test performed by the laboratory or entity; or

(5) the laboratory or entity has a historical record of accuracy with respect to the type of examination or test performed by the laboratory or entity.

SECTION ____.03. The public safety director of the Department of Public Safety of the State of Texas shall adopt rules under Section 411.0205, Government Code, as amended by this article, not later than the 61st day after the effective date of this article.

SECTION ____.04. This article 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, and applies to evidence tested after December 15, 2003. If this Act does not receive the vote necessary for immediate effect, this Act takes effect January 15, 2004, and applies to evidence tested after that date.

The floor amendment was read.

POINT OF ORDER

Senator Ogden raised a point of order that Floor Amendment No. 33 was not germane to the body of the bill.

POINT OF ORDER RULING

The Presiding Officer ruled that the point of order was well-taken and sustained.

Senator Armbrister, on behalf of Senator Bivins, offered the following amendment to the bill:

Floor Amendment No. 34

On page 1, line 13 of **CSHB 7** (Senate committee report) add the following Article.

ARTICLE ____. PROMOTION PARTNERSHIP BETWEEN THE TEXAS DEPARTMENT OF AGRICULTURE AND CERTAIN COMMODITY PRODUCERS BOARDS

SECTION ____.1. Sec. 12.0176, Agriculture Code, is amended to read as follows:

Sec. 12.0176 Cooperation with Certain Commodity Producers Boards. Upon activation of a commodity producers board under Ch. 41 of this Code, the department may as resources allow enter into cooperative agreements with one or more of the boards in order to increase the effectiveness and efficiency of the promotion of Texas agricultural products. Such cooperative agreements may include provisions relating to the programs instituted by the department under Chs. 12 and 46 of this Code, provisions relating to board contributions for promotional costs, and any other provisions the department and the board deem appropriate. Funds contributed by a board pursuant to an agreement under this section are not state funds.

SECTION ____.2. Sec. 41.002(1), Agriculture Code, is amended to read as follows:

(1) "Agricultural commodity" means an agricultural, horticultural, viticulture, or vegetable product, bees and honey, planting seed, rice, livestock or livestock product, or poultry or poultry product, produced in this state, either in its natural state or as processed by the producer. The term does not include flax. [~~or cattle.~~]

SECTION ____.3. Subchapter H, Agriculture Code, is added to read as follows:

SUBCHAPTER H. TEXAS BEEF MARKETING, EDUCATION, RESEARCH AND PROMOTION

SECTION ____.4. Sec. 41.30, Agriculture Code, is added to read as follows:

Sec. 41.30, Findings and Declaration of Policy

(a) It is hereby found and declared that:

(1) beef and beef products are basic foods that are a valuable part of the human diet;

(2) the production of beef and beef products plays a significant role in the state economy, beef and beef products are produced by thousands of Texas cattle producers and processed by numerous processing entities in the state, and beef and beef products are consumed by millions of people throughout the United States and foreign countries;

(3) beef and beef products should be readily available and marketed efficiently to ensure that the people of the state receive adequate nourishment;

(4) the maintenance and expansion of existing markets for cattle and beef products are vital to the welfare of cattle producers and those concerned with marketing, using, and producing beef products, as well as to the general economy of the state;

(5) there exists an established state organization conducting beef promotion, research, and consumer education programs that are invaluable to the efforts of promoting the consumption of beef and beef products.

(6) the department currently oversees the administration of boards established under the Texas Commodity Referendum Law, Agriculture Code, Ch. 41, and is the appropriate entity to provide oversight to a board established under this subchapter

(b) It is the intent of the Legislature that the promotion, marketing, research and educational efforts concerning beef and beef products carried out under this Subchapter utilize existing cattle industry infrastructure to the extent possible.

(c) The Department may recover costs for administration of this subchapter.

SECTION ____.5. Sec. 41.31, Agriculture Code, is added to read as follows:

Sec. 41.31, Conflict with General Commodity Law Provisions. To the extent that the provisions of this subchapter conflict with other provisions of this chapter, the provisions of this subchapter shall prevail.

SECTION ____.6. Sec. 41.32, Agriculture Code, is added to read as follows:

Sec. 41.32, Designation of Entity to Carry Out Beef Marketing, Education, Research and Promotion:

(a) The Texas Beef Council, Inc, a Texas non-profit corporation chartered by the Secretary of State on March 7, 1986, shall be recognized as the entity to plan, carry out and operate programs of research, education, promotion and marketing programs, including providing consumer information and industry information relating to beef and beef products in this state under the supervision of the Department as provided by this subchapter.

(b) Members of the board serve without compensation but are entitled to reimbursement for reasonable and necessary expenses incurred in the discharge of their duties.

SECTION ____.7. Sec. 41.33, Agriculture Code, is added to read as follows:

Sec. 41.33 Definitions

In this subchapter:

(1) "beef" means flesh of cattle.

(2) "beef products" means products produced in whole or in part from beef, exclusive of milk and products made there from.

(3) "board" means the Board of Directors of the Texas Beef Council, Inc.

(4) "cattle" means live domesticated bovine animals regardless of age.

(5) "consumer information" means nutritional data and other information that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparing and use of beef and beef products.

(6) "council" means the Texas Beef Council, Inc.

(7) "department" means the Texas Department of Agriculture.

(8) "commissioner" means the Commissioner of Agriculture.

(9) "industry information" means information and programs that will lead to the development of new markets, marketing strategies, increased efficiency, and activities to enhance the image of the cattle industry, beef and beef products.

(10) "person" means any individual, group of individuals, partnership, corporation, association, cooperative or any other entity.

(11) "producer" means any person who owns or acquires ownership of cattle except that a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

(12) "promotion" means any action including paid advertising to advance the image and desirability of beef and beef products with the express intent of improving the competitive position and stimulating sales of beef and beef products in the market place.

(13) "research" means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of beef and beef products, other related food science research, and new product development.

SECTION ____.8. Sec. 41.34, Agriculture Code, is added to read as follows:

Sec. 41.34 Powers of Council and Commissioner

(a) The council may:

(1) conduct programs consistent with the declaration of policy stated in Section 41.30;

(2) the council may accept gifts, donations, and grants of money, including appropriated funds, from state government, federal government, local governments, private corporations, or other persons, to be used for the purposes of this subchapter;

(3) borrow money with the approval of the commissioner as necessary to execute this chapter;

(4) take other action and exercise other authority as necessary to execute any act authorized by this subchapter or the Texas Nonprofit Corporation Act (Article 1396-101 et. seq. Vernon's Texas Civil Statutes; and

(5) form advisory committees composed of individuals from this state, other states or other countries and change membership on the committees as necessary.

(b) The commissioner and the State Auditor at any time may inspect the books and other financial records of the council.

SECTION ____.9. Sec. 41.35, Agriculture Code, is added to read as follows:

Sec. 41.35 Council Duties

(a) The council shall have an annual independent audit of the books, records of account and minutes of proceedings maintained by the council prepared by an independent certified public accountant or firm of independent certified public accountants. The audit shall be filed with the council, the commissioner and the state auditor and shall be made available to the public by the council or the commissioner. The state auditor may examine any work papers from the independent audit or may audit the transactions of the council if the state auditor determines that an additional audit is necessary.

(b) Not later than the sixtieth day after the last day of the fiscal year the council shall submit to the commissioner a report itemizing all income and expenditures and describing all activities of the council during the preceding fiscal year.

(c) The council shall provide fidelity bonds in amounts determined by the council for employees or agents who handle funds for the council.

(d) The council and the board are state agencies for the following purposes only:

(1) exemption from taxation including exemption from sales and use taxes, vehicle registration fees, and taxes under Chapter 152 Tax Code; and

(2) indemnification under Chapter 104 Civil Practice & Remedies Code.

(e) Funds collected by the council are not state funds and are not required to be deposited in the state treasury. The council shall deposit all money collected under this subchapter in a bank or other depository approved by the commissioner.

(f) The council is a governmental unit under Section 101.001, Civil Practice & Remedies Code and is entitled to governmental immunity. A tort claim against the council must be made under Chapter 101 Civil Practice & Remedies Code.

(g) All revenue collected under this subchapter shall be used solely to finance programs approved by the council and commissioner as consistent with this subchapter.

(h) A board member may not vote on any matter in which the member has a direct pecuniary interest.

SECTION ____.10. Sec. 41.36, Agriculture Code, is added to read as follows:

Sec. 41.36 Council Composition

(a) The board shall be composed of members appointed by the commissioner under Subsection (b) of this section. The commissioner shall appoint an initial board composed of 21 members.

(b) In making appointments under this section, the commissioner shall appoint the following board members, selected from a variety of cattle-raising regions of the state, for a one year term:

(1) three (3) representatives of the Texas and Southwestern Cattle Raisers Association;

(2) three (3) representatives of the Texas Cattle Feeders Association;

(3) three (3) representatives of the Texas Farm Bureau;

(4) two (2) representatives of the Independent Cattleman's Association;

(5) two (2) representatives of Texas purebred cattle associations, as a group;

(6) two (2) representatives of Texas dairy associations, as a group;

(7) two (2) representatives of Livestock Marketing Association of Texas;

(8) one (1) representative of meat packer/exporter associations, as a group;

(9) one (1) representative of Texas Cattle Women; and

(10) two (2) at-large directors.

(c) A vacancy on the board shall be filled by appointment by the commissioner for the unexpired term.

SECTION ____.11. Sec. 41.37, Agriculture Code, is added to read as follows:

Sec. 41.37 Beef Promotion Referendum

(a) The commissioner shall conduct a statewide referendum to determine whether cattle producers desire to establish a state beef marketing, education, research, and promotion program. The initial referendum to establish a state beef promotion program shall be held concurrently with a referendum to establish a maximum assessment to be levied on cattle producers to fund the state program.

(b) Such referendum shall be conducted under the procedures provided by Section 41.39 of this Code.

(c) A referendum ballot must include or be accompanied by information about the proposed state program and proposed assessment including:

(1) a statement of the purpose of the program;

(2) the maximum assessment to be collected under the program and a description of the manner in which the assessment is to be collected and the proceeds administered and used;

(3) a general summary of rules adopted by the commissioner under this subchapter, including a description of:

(A) cattle producer responsibility;

(B) penalties for noncompliance with the rules adopted under this subchapter and penalties for noncompliance with the statutory provisions of this subchapter; and

(C) an address and toll free telephone number that a cattle producer may use to request more information about the referendum or the program.

(d) The commissioner shall establish, by rule, requirements for providing notice of the referendum to cattle producers.

SECTION ____.12. Sec. 41.38, Agriculture Code, is added to read as follows:

Sec. 41.38 Establishment and Collection of Assessment.

(a) The commissioner, on the recommendation of the council, shall propose the maximum assessment needed to ensure the stability of the cattle industry by providing adequate funds for marketing, education, research and promotion of beef and beef products and shall propose the maximum assessment in a referendum as provided in Sec. 41.37 of this subchapter.

(b) On the recommendation of the council and with the commissioner's approval, the council may set the assessment at a level less than the maximum assessment approved by the referendum.

(c) If an assessment referendum is approved, the council may collect the assessment.

(d) An assessment levied on cattle producers may be applied to efforts relating to the marketing, education, research and promotion of beef and beef products in Texas, the United States and international markets.

(e) Prior to operations each year the commissioner shall review and approve the council's operating budget.

SECTION ____.13. Sec. 41.39, Agriculture Code, is added to read as follows:

Sec. 41.39 Conduct of Referendum; Balloting

(a) On the recommendation of the Council, the commissioner shall conduct a referendum authorized under this subchapter. Persons qualified to vote in a referendum are those producers who have owned cattle within 12 months preceding the referendum.

(b) The council shall bear all expenses incurred in conducting a referendum.

(c) The commissioner shall adopt rules for voting in a referendum.

(d) An eligible cattle producer may vote only once in a referendum.

(e) Each vote is entitled to equal weight regardless of the volume of production.

(f) Ballots in a referendum shall be mailed directly to a central location, to be determined by the commissioner. A cattle producer eligible to vote in a referendum who has not received a ballot from the commissioner, council or another source, shall be offered the option of requesting a ballot by mail or obtaining a ballot at the office of the county agent of the Texas Cooperative Extension or a government office distributing ballots in a county where the referendum is conducted.

(g) A referendum is approved if a simple majority of those voting vote in favor of the referendum.

(h) If a referendum under this subchapter is not approved, the commissioner may conduct another referendum. A referendum under this subsection cannot be held before one year after the date on which the last referendum on the same issue was held.

(i) A public hearing regarding the proposed program, including information regarding regulations to be promulgated by the commissioner may be held by the commissioner in each of several locations within the state.

(j) Individual voter information, including an individual's vote in a referendum conducted under this section, is confidential and not subject to disclosure under the Open Records law, Chapter 552 Government Code.

SECTION ____.14. Sec. 41.40, Agriculture Code, is added to read as follows:

Sec. 41.40 Authority to Adopt Rules

The commissioner may adopt rules as necessary to implement the provisions of this subchapter.

SECTION ____.15. Sec. 41.41, Agriculture Code, is added to read as follows:

Sec. 41.41 Penalties

(a) A person who violates this subchapter or a rule adopted under this subchapter commits an offense.

(b) An offense under this section is a Class C misdemeanor.

(c) If the commissioner determines that a violation of this subchapter or a rule adopted under this subchapter has occurred, the commissioner may request that the Attorney General or the county or district attorney of the county in which the alleged violation occurred or is occurring file suit for civil injunctive and/or appropriate relief.

(d) Failure to remit assessment.

(1) The council may investigate conditions that relate to the prompt remittance of the assessment by any producer or processor. If the council has probably cause to believe that a person has failed to collect an assessment or failed to remit to the council an assessment as required by this chapter, the council may:

(a) independently institute proceedings for recovery of the amount due to the board or for injunctive or other appropriate relief;

(b) request the attorney general, or the county or district attorney having jurisdiction, or both, to institute proceedings in the board's behalf; or

(c) forward to the department for action under Section 41.1011 a complaint and any original evidence or other information establishing probable cause.

(2) Suit under this section may be brought in Travis County or a county in which the person who is alleged to have failed to collect or remit an assessment conducts business related to the commodity subject to the uncollected or unpaid assessment.

(3) The remedies provided by this section are cumulative of other remedies provided by law.

SECTION ____.16. Sec. 41.42, Agriculture Code, is added to read as follows:

Sec. 41.42 Annual Report

The council shall issue to the commissioner and the appropriate oversight committee in the Senate and House of Representatives an annual report detailing its efforts to carry out the purposes of this subchapter.

SECTION ____.17. Sec. 41.43, Agriculture Code, is added to read as follows:

Sec. 41.43 Exemption from Lawsuits, Liability, Taxation and Legal Process

The Legislature recognizes that the council, acting under the supervision and control of the commissioner, is carrying out an important governmental function and that therefore, the council, as a quasi-governmental entity, must be immune from lawsuits and liability except to the extent provided in Chapter 101, Civil Practices & Remedies Code and as provided by this section. Therefore, no claims may be brought or continued against the council except claims allowed by Chapter 101, Civil Practice & Remedies Code. With the exception of finally adjudicating claims arising from Chapter 101, Civil Practice & Remedies Code, all payments, contributions, funds and assessments received or held by the council under this subchapter are exempt from garnishment, attachment, execution or other seizure and from state and local taxation, levies, sales and other process and are unassignable.

SECTION ____.18. Sec. 41.44, Agriculture Code, is added to read as follows:

Sec. 41.44 Producer Refunds

(a) Assessments collected by the council under this subchapter are subject to Section 41.083 of this Code.

Renumber subsequent Articles appropriately.

The floor amendment was read.

Senator Armbrister, on behalf of Senator Bivins, offered the following amendment to the amendment:

Floor Amendment No. 34A

Amend Floor Amendment No. 34 to **CSHB 7** as follows:

Strike everything below page 1, line 2 and insert the following.

ARTICLE ____. PROMOTION PARTNERSHIP BETWEEN THE TEXAS DEPARTMENT OF AGRICULTURE AND CERTAIN COMMODITY PRODUCERS BOARDS

SECTION ____.1. Sec. 12.0176, Agriculture Code, is amended to read as follows:

Sec. 12.0176 Cooperation with Certain Commodity Producers Boards. The department, may as resources allow, enter into cooperative agreements with a board in order to increase the effectiveness and efficiency of the promotion of Texas agricultural products. Such cooperative agreements may include provisions relating to the programs instituted by the department under Chs. 12 and 46 of this Code, provisions relating to board contributions for promotional costs, and any other provisions the department and the board deem appropriate. Funds contributed by a board pursuant to an agreement under this section are not state funds.

SECTION ____.2. Sec. 41.002(1), Agriculture Code, is amended to read as follows:

(1) "Agricultural commodity" means an agricultural, horticultural, viticulture, or vegetable product, bees and honey, planting seed, rice, livestock or livestock product, or poultry or poultry product, produced in this state, either in its natural state or as processed by the producer. The term does not include flax. [~~or cattle.~~]

SECTION ____.3. Subchapter H, Agriculture Code, is added to read as follows:

SUBCHAPTER H. TEXAS BEEF MARKETING, EDUCATION, RESEARCH AND PROMOTION

SECTION ____.4. Sec. 41.30, Agriculture Code, is added to read as follows:

Sec. 41.30. Declaration of Policy

(a) It is the intent of the Legislature that the promotion, marketing, research and educational efforts concerning beef and beef products carried out under this Subchapter utilize existing cattle industry infrastructure to the extent possible.

(b) The Texas Beef Council, Inc, a Texas non-profit corporation chartered by the Secretary of State on March 7, 1986, shall be recognized as the entity to plan, carry out and operate programs of research, education, promotion and marketing programs.

(c) The Department may recover costs for administration of this subchapter.

(d) The council shall issue to the commissioner and the and the appropriate oversight committee in the Senate and House of Representatives an annual report detailing its efforts to carry out the purposes of this subchapter.

SECTION ____.5. Sec. 41.31, Agriculture Code, is added to read as follows:

Sec. 41.31, Conflict with General Commodity Law Provisions. To the extent that the provisions of this subchapter conflict with other provisions of this chapter, the provisions of this subchapter shall prevail.

SECTION ____.6. Sec. 41.32, Agriculture Code, is added to read as follows:

Sec. 41.32 Definitions

In this subchapter:

(1) "beef products" means products produced in whole or in part from beef, exclusive of milk and products made there from.

(2) "board" means the Board of Directors of the Texas Beef Council, Inc.

(3) "council" means the Texas Beef Council, Inc.

(4) "department" means the Texas Department of Agriculture.

(5) "commissioner" means the Commissioner of Agriculture.

(6) "person" means any individual, group of individuals, partnership, corporation, association, cooperative or any other entity.

(7) "producer" means any person who owns or acquires ownership of cattle except that a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

SECTION ____.7. Sec. 41.33, Agriculture Code, is added to read as follows:

Sec. 41.33 Council Composition

(a) The board shall be composed of members appointed by the commissioner under Subsection (b) of this section. The commissioner shall appoint an initial board composed of 21 members.

(b) The commissioner shall appoint the following board members, for a one year term:

(1) three (3) representatives of the Texas and Southwestern Cattle Raisers Association;

(2) three (3) representatives of the Texas Cattle Feeders Association;

(3) three (3) representatives of the Texas Farm Bureau;

(4) two (2) representatives of the Independent Cattleman's Association;

(5) two (2) representatives of Texas purebred cattle associations, as a group;

(6) two (2) representatives of Texas dairy associations, as a group;

(7) two (2) representatives of Livestock Marketing Association of Texas;

(8) one (1) representative of meat packer/exporter associations, as a group;

(9) one (1) representative of Texas Cattle Women; and

(10) two (2) at-large directors.

(c) A vacancy on the board shall be filled by appointment by the commissioner for the unexpired term.

SECTION ____.7. Sec. 41.34, Agriculture Code, is added to read as follows:

Sec. 41.34 Establishment, Collection of Assessment; Finances.

(a) The commissioner, on the recommendation of the council, shall propose the maximum assessment in a referendum.

(b) If an assessment referendum is approved, the council shall collect the assessment.

(c) An assessment levied on cattle producers may be applied to efforts relating to the marketing, education, research and promotion of beef and beef products in Texas, the United States and international markets.

(d) Prior to operations each year the commissioner shall review and approve the council's operating budget.

(e) Funds collected by the council are not state funds and are not required to be deposited in the state treasury.

(f) The council may:

(1) accept gifts, donations, and grants of money, including appropriated funds, from state government, federal government, local governments, private corporations, or other persons, to be used for the purposes of this subchapter;

(2) borrow money upon approval of the commissioner; and

(3) take other action and exercise other authority as necessary to execute any act authorized by this subchapter or the Texas Nonprofit Corporation Act (Article 1396-101 et. seq. Vernon's Texas Civil Statutes).

(g) The commissioner and the State Auditor at any time may inspect the books and other financial records of the council.

(h) Assessments collected by the council under this subchapter are subject to Section 41.083 of this Code, but are not subject to Section 41.082 of this Code.

SECTION ____.8. Sec. 41.35, Agriculture Code, is added to read as follows:

Sec. 41.35 Conduct of Referendum; Balloting

(a) On the recommendation of the Council, the Commissioner shall conduct a referendum authorized under this subchapter. Persons qualified to vote in a referendum are those producers who have owned cattle within 12 months preceding the referendum.

(b) The council shall bear all expenses incurred in conducting a referendum.

(c) An eligible cattle producer may vote only once in a referendum.

(d) Each vote is entitled to equal weight regardless of the volume of production.

(e) A referendum is approved if a simple majority of those voting vote in favor of the referendum.

(f) Individual voter information, including an individual's vote in a referendum conducted under this section, is confidential and not subject to disclosure under the Open Records law, Chapter 552 Government Code.

SECTION ____.9. Sec. 41.36, Agriculture Code, is added to read as follows:

Sec. 41.36 Authority to Adopt Rules

The commissioner may adopt rules as necessary to implement the provisions of this subchapter, including without limitation rules relating to the auditing of the books of the council, fidelity bonds required for certain council employees, conflicts of interest, penalties, and to a statewide referendum.

SECTION ____.10. Sec. 41.37, Agriculture Code, is added to read as follows:

Sec. 41.37 Penalties

(a) A person who violates this subchapter or a rule adopted under this subchapter commits an offense.

(b) An offense under this section is a Class C misdemeanor.

Renumber accordingly.

The floor amendment was read.

POINT OF ORDER

Senator Ogden raised a point of order that Floor Amendment No. 34A was not germane to the body of the bill.

On motion of Senator Ogden, the point of order was withdrawn.

On motion of Senator Armbrister, on behalf of Senator Bivins, Floor Amendment No. 34A was withdrawn.

The question is on the adoption of Floor Amendment No. 34.

POINT OF ORDER

Senator Ogden raised a point of order that Floor Amendment No. 34 was not germane to the body of the bill.

POINT OF ORDER RULING

The Presiding Officer ruled that the point of order was well-taken and sustained.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 31

Amend **CSHB 7** (Senate committee printing) by adding an appropriately numbered ARTICLE to read as follows:

ARTICLE ____: STATE TRAVEL SERVICES CONTRACTS

SECTION ____. Section 44.044, Education Code, as added by Chapter 482, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

Sec. 44.044. LIMIT ON EXPENDITURES FOR TRAVEL SERVICES. A school district or public junior college may not reimburse an officer or employee for expenditures under a Texas Building and Procurement Commission's travel services contract for travel services in excess of the applicable amount [~~determined using the state travel allowance guide adopted by the comptroller under Section 660.021, Government Code~~].

The floor amendment was read.

Senator Staples offered the following amendment to the amendment:

Floor Amendment No. 31A

Amend Floor Amendment No. 31 to **CSHB 7** (Senate committee printing) by striking the amendment in its entirety and substituting the following:

(1) On page 11, line 42, between "operations" and "of the school districts", insert ", including the district's expenditures for school district officer or employee travel services,".

(2) On page 13, line 32, strike "and".

(3) On page 13, line 33, strike the period and substitute "; and".

(4) On page 13, between lines 33 and 34, insert the following:

(5) Section 44.044, Education Code.

The amendment to the amendment was read.

POINT OF ORDER

Senator Ogden raised a point of order that Floor Amendment No. 31A was not germane to the body of the bill.

On motion of Senator Ogden, the point of order was withdrawn.

Question recurring on the adoption of Floor Amendment No. 31A, the amendment to the amendment was adopted without objection.

Question recurring on the adoption of Floor Amendment No. 31 as amended, the amendment as amended was adopted without objection.

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 35

Amend **CSHB 7** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION ___. Section 392.304(a), Finance Code, as amended by Chapter 851, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(a) Except as otherwise provided by this section, in debt collection or obtaining information concerning a consumer, a debt collector may not use a fraudulent, deceptive, or misleading representation that employs the following practices:

(1) using a name other than the:

(A) true business or professional name or the true personal or legal name of the debt collector while engaged in debt collection; or

(B) name appearing on the face of the credit card while engaged in the collection of a credit card debt;

(2) failing to maintain a list of all business or professional names known to be used or formerly used by persons collecting consumer debts or attempting to collect consumer debts for the debt collector;

(3) representing falsely that the debt collector has information or something of value for the consumer in order to solicit or discover information about the consumer;

(4) failing to disclose clearly in any communication with the debtor the name of the person to whom the debt has been assigned or is owed when making a demand for money;

(5) in the case of a third-party debt collector, failing to disclose, except in a formal pleading made in connection with a legal action:

(A) that the communication [~~debt collector~~] is an attempt [~~attempting~~] to collect a debt and that any information obtained will be used for that purpose, if the communication is the initial written or oral communication between the third-party debt collector and [~~with~~] the debtor; or

(B) that the communication is from a debt collector, if the communication is a subsequent written or oral communication between the third-party debt collector and [~~with~~] the debtor;

(6) using a written communication that fails to indicate clearly the name of the debt collector and the debt collector's street address or post office box and telephone number if the written notice refers to a delinquent consumer debt;

(7) using a written communication that demands a response to a place other than the debt collector's or creditor's street address or post office box;

(8) misrepresenting the character, extent, or amount of a consumer debt, or misrepresenting the consumer debt's status in a judicial or governmental proceeding;

(9) representing falsely that a debt collector is vouched for, bonded by, or affiliated with, or is an instrumentality, agent, or official of, this state or an agency of federal, state, or local government;

(10) using, distributing, or selling a written communication that simulates or is represented falsely to be a document authorized, issued, or approved by a court, an official, a governmental agency, or any other governmental authority or that creates a false impression about the communication's source, authorization, or approval;

(11) using a seal, insignia, or design that simulates that of a governmental agency;

(12) representing that a consumer debt may be increased by the addition of attorney's fees, investigation fees, service fees, or other charges if a written contract or statute does not authorize the additional fees or charges;

(13) representing that a consumer debt will definitely be increased by the addition of attorney's fees, investigation fees, service fees, or other charges if the award of the fees or charges is subject to judicial discretion;

(14) representing falsely the status or nature of the services rendered by the debt collector or the debt collector's business;

(15) using a written communication that violates the United States postal laws and regulations;

(16) using a communication that purports to be from an attorney or law firm if it is not;

(17) representing that a consumer debt is being collected by an attorney if it is not; [~~or~~]

(18) representing that a consumer debt is being collected by an independent, bona fide organization engaged in the business of collecting past due accounts when the debt is being collected by a subterfuge organization under the control and direction of the person who is owed the debt; or

(19) using any other false representation or deceptive means to collect a debt or obtain information concerning a consumer.

The amendment was read.

On motion of Senator Carona, Floor Amendment No. 35 was withdrawn.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 36

Amend **CSHB 7** by adding a new article, numbered appropriately, to read as follows:

ARTICLE ___. TEXAS GRANT PROGRAM FUNDING

SECTION ___.01. Section 20.02, Chapter 1325, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

Sec. 20.02. (a) [~~The comptroller shall establish the Texas mobility fund debt service account as a dedicated account within the general revenue fund.~~

[~~(b)~~] Notwithstanding Sections 780.002(b) and (c) [~~780.002(a) and (b)~~], Health and Safety Code, as added by this Act, of the money allocated to the undedicated portion of the general revenue fund by Section 780.002(b) [~~780.002(a)~~], Health and Safety Code, as added by this Act, other than money that may only be appropriated to the Department of Public Safety, in state fiscal years [~~year~~] 2004 and 2005 the comptroller shall deposit that money to the credit of the Texas mobility fund instead of to the credit of the general revenue fund [~~debt service account, which is subject to the provisions of Subsection (d)~~].

(b) [~~(c)~~] Notwithstanding Section 542.4031(g)(1), Transportation Code, as added by this Act, of the money allocated to the undedicated portion of the general revenue fund in Section 542.4031(g)(1), Transportation Code, in state fiscal years [~~year~~] 2004 and 2005 the comptroller shall deposit that money to the credit of the Texas mobility fund instead of to the credit of the general revenue fund [~~debt service account, which is subject to the provisions of Subsection (d)~~].

(c) [~~(d) Funds deposited to the Texas mobility fund debt service account pursuant to Subsections (b) and (c) may be transferred to the Texas mobility fund upon certification by the Texas Transportation Commission to the comptroller that a payment is due under an obligation pursuant to Section 49-k, Article 3, Texas Constitution. Funds in the Texas mobility fund debt service account are not appropriated in the state fiscal year ending August 31, 2004.~~

[~~(e)~~] Notwithstanding Sections 521.058, 521.313(c), 521.3466(e), 521.427, 522.029(i), 524.051(c), 548.508, 644.153(i), and 724.046(c), Transportation Code, as added by this Act, to the extent that those sections allocate funds to the Texas mobility fund, in state fiscal years [~~year~~] 2004 and 2005 the comptroller shall deposit those funds to the credit of the general revenue fund instead of to the credit of the Texas mobility fund.

SECTION ___.02. (a) An amount of money estimated to be $231,700,000 deposited to the credit of the general revenue fund in state fiscal year 2005 under Section 20.02(c), Chapter 1325, Acts of the 78th Legislature, Regular Session, 2003, as amended by this Act, is appropriated out of the general revenue fund as follows:

(1) for the state fiscal year beginning September 1, 2004, $125 million is appropriated to the Texas Higher Education Coordinating Board for the purposes of the TEXAS Grant Program under Subchapter M, Chapter 56, Education Code; and

(2) for the state fiscal biennium beginning September 1, 2003, the remainder of that money is appropriated to replace an equal amount of federal fiscal relief funds utilized to certify general revenue appropriations made by Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003 (the General Appropriations Act).

(b) The federal fiscal relief funds replaced under Subsection (a)(2) of this section are appropriated to the comptroller of public accounts for the state fiscal biennium beginning September 1, 2003, for the purposes described by Section 11.28, Article IX, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003 (the General Appropriations Act).

(c) This section supersedes any other law enacted by the 78th Legislature, 3rd Called Session, 2003, to the extent of any conflict, regardless of relative dates of enactment.

The floor amendment was read.

On motion of Senator Ellis, Floor Amendment No. 36 was withdrawn.

(Senator Armbrister in Chair)

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 37

Amend **CSHB 7** by adding the following appropriately numbered article:

ARTICLE ____. RESTORATION OF CERTAIN INSURANCE PROGRAM FUNDING

SECTION ____.01. Section 20.02, Chapter 1325, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

Sec. 20.02. (a) [~~The comptroller shall establish the Texas mobility fund debt service account as a dedicated account within the general revenue fund.~~

[~~(b)~~] Notwithstanding Sections 780.002(b) and (c) [~~780.002(a) and (b)~~], Health and Safety Code, as added by this Act, of the money allocated to the undedicated portion of the general revenue fund by Section 780.002(b) [~~780.002(a)~~], Health and Safety Code, as added by this Act, other than money that may only be appropriated to the Department of Public Safety, in state fiscal years [~~year~~] 2004 and 2005 the comptroller shall deposit that money to the credit of the Texas mobility fund instead of to the credit of the general revenue fund [~~debt service account, which is subject to the provisions of Subsection (d)~~].

(b) [~~(c)~~] Notwithstanding Section 542.4031(g)(1), Transportation Code, as added by this Act, of the money allocated to the undedicated portion of the general revenue fund in Section 542.4031(g)(1), Transportation Code, in state fiscal years [~~year~~] 2004 and 2005 the comptroller shall deposit that money to the credit of the Texas mobility fund instead of to the credit of the general revenue fund [~~debt service account, which is subject to the provisions of Subsection (d)~~].

(c) [~~(d) Funds deposited to the Texas mobility fund debt service account pursuant to Subsections (b) and (c) may be transferred to the Texas mobility fund upon certification by the Texas Transportation Commission to the comptroller that a payment is due under an obligation pursuant to Section 49-k, Article 3, Texas Constitution. Funds in the Texas mobility fund debt service account are not appropriated in the state fiscal year ending August 31, 2004.~~

[~~(e)~~] Notwithstanding Sections 521.058, 521.313(c), 521.3466(e), 521.427, 522.029(i), 524.051(c), 548.508, 644.153(i), and 724.046(c), Transportation Code, as added by this Act, to the extent that those sections allocate funds to the Texas mobility fund, in state fiscal years [~~year~~] 2004 and 2005 the comptroller shall deposit those funds to the credit of the general revenue fund instead of to the credit of the Texas mobility fund.

SECTION ____.02. (a) An amount of money estimated to be $235,100,000 deposited to the credit of the general revenue fund in state fiscal year 2005 under Section 20.02(c), Chapter 1325, Acts of the 78th Legislature, Regular Session, 2003, as amended by this Act, is appropriated out of the general revenue fund for the state fiscal biennium beginning September 1, 2003, to replace an equal amount of federal fiscal relief funds utilized to certify general revenue appropriations made by House Bill No. 1, Acts of the 78th Legislature, Regular Session, 2003 (the General Appropriations Act). The federal fiscal relief funds so replaced are appropriated to the comptroller of public accounts for the state fiscal biennium beginning September 1, 2003, for the purposes described by Section 11.28, Article IX, House Bill No. 1, Acts of the 78th Legislature, Regular Session, 2003 (the General Appropriations Act), as amended by this Act.

SECTION ____.03. Section 62.151, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) The child health plan must provide covered dental benefits that include at least the covered preventive dental benefits described by the recommended benefits package described for a state-designed child health plan by the Texas House of Representatives Committee on Public Health "CHIP" Interim Report to the Seventy-Sixth Texas Legislature dated December, 1998, and the Senate Interim Committee on Children's Health Insurance Report to the Seventy-Sixth Texas Legislature dated December 1, 1998.

SECTION ____.04. Section 11.28, Article IX, House Bill No. 1, Acts of the 78th Legislature, Regular Session, 2003 (the General Appropriations Act) is amended to read as follows:

Sec. 11.28. Appropriation of State Fiscal Relief Federal Funds.

(a) Notwithstanding other provisions of this Act, based upon the passage of federal legislation that provides federal funds for the purpose of state fiscal relief, such funds are appropriated, after the implementation of Section 11.15, Contingency Appropriation Reduction and Contingency Appropriation, to the Comptroller of Public Accounts in the fiscal year in which the funds are received for the purpose of transferring funds to state agencies for state fiscal relief, as provided by subsection (b) of this section.

(b) The Legislative Budget Board and the Governor shall develop a plan that outlines the transfers of these funds, by fiscal year, agency, and strategy for the purpose of state fiscal relief. It is a priority of the Legislature that the plan of transfers will provide funding as follows:

(1) Restoration of dental eligibility criteria and benefits coverage under the state child health plan (CHIP) to fiscal year 2003 levels.

(2) [~~(1)~~] One-quarter of the amounts received for state fiscal relief may be used for partial restoration of reimbursement rates assumed in Article II of this Act to fiscal year 2003 levels.

(3) [~~(2)~~] Restoration of the hours assumed in Community Care Programs at the Department of Human Services to fiscal year 2003.

(4) [~~(3)~~] Such funds shall also be used for the items shown below in bill pattern order:

Texas Department of Health:

A.3.1, HIV & STD Education & Services

D.2.1, Community Health Services

Health and Human Services Commission:

B.2.3, Premiums: Pregnant Women (from 158% of the Federal Poverty Level to 185% of the Federal Poverty Level)

B.2.4, Premiums: Children/Medically Needy (for Medically Needy)

B.2.7, Cost Reimbursed Services (for Graduate Medical Education)

Department of Human Services:

A.1.1, Community Care - State

Department of Mental Health and Mental Retardation

C.1.1, MR Community Services

Department of Protective and Regulatory Services:

A.1.7, At-Risk Prevention Services

(5) [~~(4)~~] Texas B-On-Time Loan Program.

The floor amendment was read.

On motion of Senator Shapleigh, Floor Amendment No. 37 was withdrawn.

Senator Shapleigh again offered the following amendment to the bill:

Floor Amendment No. 18

Amend **CSHB 7** as follows:

(1) Strike SECTION 10.09 of the bill and renumber the subsequent SECTIONS of the bill appropriately (committee printing page 11, line 28 through page 12, line 10).

(2) Strike SECTION 10.19 of the bill and renumber the subsequent SECTIONS of the bill appropriately (committee printing page 13, lines 29-33).

(3) Strike SECTION 10.22 of the bill and renumber the subsequent SECTIONS of the bill appropriately (committee printing page 13, line 57 through page 14, line 9).

The floor amendment was again read.

On motion of Senator Ogden, Floor Amendment No. 18 was tabled by the following vote: Yeas 18, Nays 11.

Yeas: Averitt, Brimer, Carona, Deuell, Duncan, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Nelson, Ogden, Ratliff, Staples, Wentworth, Whitmire, Williams.

Nays: Armbrister, Barrientos, Ellis, Gallegos, Hinojosa, Lucio, Madla, Shapleigh, Van de Putte, West, Zaffirini.

Absent-excused: Bivins, Shapiro.

(President in Chair)

Senator Jackson offered the following amendment to the bill:

Floor Amendment No. 38

Amend **CSHB 7** by adding the following appropriately numbered SECTION:

SECTION ____. Section 2(11)(A), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(A) "Project" shall mean the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements (one or more) that are for the creation or retention of primary jobs and that are found by the board of directors to be required or suitable for the development, retention, or expansion of manufacturing and industrial facilities, research and development facilities, transportation facilities (including but not limited to airports, ports, mass commuting facilities, and parking facilities), sewage or solid waste disposal facilities, recycling facilities, air or water pollution control facilities, facilities for the furnishing of water to the general public, distribution centers, small warehouse facilities capable of serving as decentralized storage and distribution centers, primary job training facilities for use by institutions of higher education, and regional or national corporate headquarters facilities.

"Project" also includes job training required or suitable for the promotion of development and expansion of business enterprises and other enterprises described by this Act, as provided by Section 38 of this Act.

"Project" also includes expenditures found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises limited to streets and roads, rail spurs, water and electric utilities, gas utilities, drainage and related improvements, and telecommunications and Internet improvements.

"Project" also includes costs or expenditures found by the board of directors of a corporation, other than a corporation organized under Section 4A or Section 4B hereof, to be required or suitable for the development, retention, or expansion of solid waste disposal facilities.

The floor amendment was read.

On motion of Senator Jackson, Floor Amendment No. 38 was withdrawn.

Senator Madla offered the following amendment to the bill:

Floor Amendment No. 39

Amend **CSHB 7** by adding the following appropriately numbered article and renumbering the subsequent articles appropriately:

ARTICLE ___. WATER DISTRICT BOUNDARIES

SECTION ___.01. (a) Section 20, Chapter 200, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

(b) The boundaries of the Hudspeth County Underground Water Conservation District No. 1 are the boundaries as they existed on August 31, 2003.

SECTION ___.02. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect on the 91st day after the last day of the legislative session.

The floor amendment was read.

On motion of Senator Madla, Floor Amendment No. 39 was withdrawn.

Senator Gallegos offered the following amendment to the bill:

Floor Amendment No. 40

Amend **CSHB 7** by adding the following appropriately numbered article and renumbering subsequent articles accordingly:

ARTICLE ____. INCREASE IN CIGARETTE TAX
AND USE FOR HEALTH AND HUMAN SERVICES PROGRAMS

SECTION ____.01. Section 154.021(b), Tax Code, is amended to read as follows:

(b) The tax rates are:

(1) $70.50 [~~$20.50~~] per thousand on cigarettes weighing three pounds or less per thousand; and

(2) the rate provided by Subdivision (1) plus $2.10 per thousand on cigarettes weighing more than three pounds per thousand.

SECTION ____.02. Section 154.603, Tax Code, is amended to read as follows:

Sec. 154.603. DISPOSITION OF REVENUE. (a) After the deductions for the purposes provided by Section 154.602 [~~of this code~~], the revenue remaining of the first $2 of tax received per 1,000 cigarettes for cigarettes weighing three pounds or less per thousand and the first $4.10 per 1,000 cigarettes of the tax received for cigarettes weighing more than three pounds per thousand is allocated:

(1) 18.75 percent to the foundation school fund; and

(2) 81.25 percent to the general revenue fund.

(b) The revenue remaining after the deductions for the purposes provided by Section 154.602 [~~of this code~~] and allocation under Subsection (a) of the next $19.375 of tax received per 1,000 cigarettes for cigarettes weighing three pounds or less per thousand and the next $19.375 per 1,000 cigarettes of the tax received for cigarettes weighing more than three pounds per thousand [~~this section~~] is allocated to the general revenue fund.

(c) The revenue remaining after the deductions for the purposes provided by Section 154.602 and allocation under Subsections (a) and (b) shall be deposited as follows:

(1) the next $2.50 of tax received per 1,000 cigarettes for cigarettes weighing three pounds or less per thousand and the next $2.50 per 1,000 cigarettes of the tax received for cigarettes weighing more than three pounds per thousand shall be deposited to the credit of the tobacco cessation account in the general revenue fund and may be appropriated only to the Texas Department of Health for programs to reduce the use of cigarettes and tobacco products in this state;

(2) the next $5 of tax received per 1,000 cigarettes for cigarettes weighing three pounds or less per thousand and the next $5 per 1,000 cigarettes of the tax received for cigarettes weighing more than three pounds per thousand shall be deposited to the credit of the trauma care account in the general revenue fund and may be appropriated only to the Texas Department of Health for programs to provide emergency medical services and trauma care in this state;

(3) the next $1.50 of tax received per 1,000 cigarettes for cigarettes weighing three pounds or less per thousand and the next $1.50 per 1,000 cigarettes of the tax received for cigarettes weighing more than three pounds per thousand shall be deposited to the credit of the Texas Department on Aging account in the general revenue fund and may be appropriated only to the Texas Department on Aging for programs to meet the needs of this state's elderly population;

(4) the next 12.5 cents of tax received per 1,000 cigarettes for cigarettes weighing three pounds or less per thousand and the next 12.5 cents per 1,000 cigarettes of the tax received for cigarettes weighing more than three pounds per thousand shall be deposited to the credit of the Texas Cancer Registry account in the general revenue fund and may be appropriated only to the Texas Department of Health to administer the Texas Cancer Registry;

(5) the next $15 of tax received per 1,000 cigarettes for cigarettes weighing three pounds or less per thousand and the next $15 per 1,000 cigarettes of the tax received for cigarettes weighing more than three pounds per thousand shall be deposited to the credit of the Texas Department of Health account in the general revenue fund and may be appropriated only to the Texas Department of Health for programs administered by the department;

(6) the next $2.50 of tax received per 1,000 cigarettes for cigarettes weighing three pounds or less per thousand and the next $2.50 per 1,000 cigarettes of the tax received for cigarettes weighing more than three pounds per thousand shall be deposited to the credit of the rural health care account in the general revenue fund and may be appropriated only to the Texas Department of Health for programs to improve access to primary and preventive health care services in rural areas of this state;

(7) the next $7.50 of tax received per 1,000 cigarettes for cigarettes weighing three pounds or less per thousand and the next $7.50 per 1,000 cigarettes of the tax received for cigarettes weighing more than three pounds per thousand shall be deposited to the credit of the children's health insurance program account in the general revenue fund and may be appropriated only to the Health and Human Services Commission for the child health care program under Chapter 62, Health and Safety Code; and

(8) the remaining $15 of tax received per 1,000 cigarettes for cigarettes weighing three pounds or less per thousand and the remaining $15 per 1,000 cigarettes of the tax received for cigarettes weighing more than three pounds per thousand shall be deposited to the credit of the medical assistance account in the general revenue fund and may be appropriated only to the Health and Human Services Commission for the medical assistance program under Chapter 32, Human Resources Code.

SECTION ____.03. This article takes effect February 1, 2004.

The floor amendment was read.

POINT OF ORDER

Senator Nelson raised a point of order that Floor Amendment No. 40 was not germane to the body of the bill.

POINT OF ORDER RULING

The President ruled that the point of order was well-taken and sustained.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 41

Amend **CSHB 7** by adding the following appropriately numbered article to read as follows and renumbering the remaining articles appropriately:

ARTICLE ___. AMENDMENTS TO TEXAS TIMESHARE ACT

SECTION ___. Section 221.002, Property Code, is amended to read as follows:

Sec. 221.002. DEFINITIONS. As used in this chapter:

(1) "Accommodation" means any apartment, condominium or cooperative unit, [~~or~~] hotel or motel room, cabin, lodge, or other private or commercial structure that:

(A) is affixed to real property;

(B) is designed for occupancy or use by one or more individuals; and

(C) is part of [~~in a building or commercial structure that is situated on~~] a timeshare plan [~~property and subject to a timeshare regime~~].

(2) "Advertisement [~~Advertising~~]" means any written, oral, or electronic communication that is directed to or targeted at individuals in this state and contains a promotion, [~~direct or indirect solicitation or~~] inducement, or offer to sell a timeshare interest, including a promotion, inducement, or offer to sell:

(A) contained in a brochure, pamphlet, or radio or television transcript;

(B) communicated by [~~to purchase and includes a solicitation or inducement made by print or~~] electronic media or telephone; or

(C) solicited[~~,~~] through direct [~~the~~] mail[~~, or by personal contact~~].

(3) "Amenities" means all common areas and includes recreational and maintenance facilities of the timeshare plan [~~property~~].

(4) "Assessment" means an amount assessed against or collected from a purchaser by an association or its managing entity in a fiscal year, regardless of the frequency with which the amount is assessed or collected, to cover expenditures, charges, reserves, or liabilities related to the operation of a timeshare plan or timeshare properties managed by the same managing entity.

(5) "Association" means a council or association composed of all persons who have purchased a timeshare interest.

(6) "Commission" means the Texas Real Estate Commission.

(7) "Component site" means a specific geographic location where accommodations that are part of a multisite timeshare plan are located. Separate phases of a single timeshare property in a specific geographic location and under common management are a single component site.

(8) [~~(5) "Council of purchasers" means a council or association composed of all persons who have purchased a timeshare estate.~~

[~~(6)~~] "Developer" means:

(A) any person, excluding a sales agent, who creates a timeshare plan or is in the business of selling timeshare interests or employs a sales agent to sell timeshare interests; or

(B) any person who succeeds in the developer's interest by sale, lease, assignment, mortgage, or other transfer if the person:

(i) offers at least 12 timeshare interests in a particular timeshare plan; and

(ii) is in the business of selling timeshare interests or employs a sales agent to sell timeshare interests [~~regime~~].

(9) [~~(7)~~] "Dispose" or "disposition" means a voluntary transfer of any legal or equitable timeshare interest but does not include the transfer or release of a real estate lien or of a security interest.

(10) [~~(8)~~] "Escrow agent" means a [~~an independent~~] bonded escrow company, a financial [~~or an~~] institution whose accounts are insured by a governmental agency or instrumentality, or an attorney, accountant, real estate broker, or title insurance agent licensed in this state [~~and~~] who is responsible for the receipt and disbursement of funds in accordance with this chapter.

(11) [~~(9)~~] "Exchange company" means any person[~~, including a developer,~~] who owns or operates an exchange program.

(12) [~~(10)~~] "Exchange disclosure statement" means a written statement that includes the information required by Section 221.033 [~~201.033~~].

(13) [~~(11)~~] "Exchange program" means any method, arrangement, or procedure for the voluntary exchange of [~~program under which the owner of~~] a timeshare interest or other [~~may exchange a timeshare period for another timeshare period in the same or a different timeshare~~] property interest among purchasers or owners, but does not include an assignment of a right to use and occupy an accommodation or facility granted to a purchaser or owner of a timeshare interest in a single-site timeshare plan [~~a one-time exchange of timeshare periods in the same timeshare property if offered to a purchaser by a developer after that purchaser's disposition~~].

(14) "Incidental use right" means the right to use accommodations and amenities at one or more timeshare properties that is not guaranteed and is administered by the managing entity of the timeshare properties that makes vacant accommodations at the timeshare properties available to owners of timeshare interests in the timeshare properties.

(15) [~~(12)~~] "Managing entity" means the person responsible for operating and maintaining a timeshare property.

(16) "Multisite timeshare plan" means a plan in which a timeshare purchaser has:

(A) a specific timeshare interest, which is the right to use and occupy accommodations at a specific timeshare property and the right to use and occupy accommodations at one or more other component sites created by or acquired through the reservation system of the timeshare plan; or

(B) a nonspecific timeshare interest, which is the right to use and occupy accommodations at more than one component site created by or acquired through the reservation system of the timeshare plan but which does not include a right to use and occupy a particular accommodation.

(17) [~~(13) "Master deed" or "master lease" or "declaration" means the deed, lease, or declaration establishing real property as a timeshare regime.~~]

[~~(14)~~] "Offering" or "offer" means any advertisement, inducement, or solicitation and includes any attempt to encourage a person to purchase a timeshare interest other than as a security for an obligation.

(18) [~~(15)~~] "Project instrument" means a timeshare instrument or one or more recordable documents, by whatever name denominated, applying to the whole of a timeshare project and containing restrictions or covenants regulating the use, occupancy, or disposition of units in a project, including a [~~master deed, master lease,~~] declaration for a condominium, association articles of incorporation, association [~~or~~] bylaws, and rules for a condominium in which a timeshare plan is created.

(19) [~~(16)~~] "Promotion" means any program, [~~or~~] activity, contest, or gift, prize, or other item of value used to induce any person to attend a timeshare sales presentation.

(20) [~~(17) "Promotional disclosure statement" means a written statement that includes the information required by Section 201.031.~~]

[~~(18)~~] "Purchaser" means any person, other than a developer [~~seller~~], who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare interest other than as a security for an obligation.

(21) "Reservation system" means the method, arrangement, or procedure by which a purchaser, in order to reserve the use and occupancy of an accommodation of a multisite timeshare plan for one or more timeshare periods, is required to compete with other purchasers in the same multisite timeshare plan, regardless of whether the reservation system is operated and maintained by the multisite timeshare plan, a managing entity, an exchange company, or any other person. If a purchaser is required to use an exchange program as the purchaser's principal means of obtaining the right to use and occupy the accommodations and facilities of the plan, the arrangement is considered a reservation system. If the exchange company uses a mechanism to exchange timeshare periods among members of the exchange program, the use of the mechanism is not considered a reservation system of the multisite timeshare plan.

[~~(19) "Seller" means any person, including a developer, who in the ordinary course of business offers a timeshare interest for sale to the public, but does not include a person who acquires a timeshare interest for his use and subsequently offers it for resale.~~

[~~(20) "Substantially complete" means that the timeshare unit, including furnishings and appliances, is complete as represented in the timeshare disclosure statement, the accommodations are ready for occupancy, and the amenities dedicated to the timeshare regime are as represented in the timeshare disclosure statement.~~

[~~(21) "Timeshare estate" means any arrangement under which the purchaser receives a freehold estate or an estate for years in a timeshare property and the right to use an accommodation or amenities, or both, in that property for a timeshare period on a recurring basis.~~]

(22) "Single-site timeshare plan" means a timeshare plan in which a timeshare purchaser's right to use and occupy accommodations is limited to a single timeshare property. A single-site timeshare plan that includes an incidental use right or a program under which the owner of a timeshare interest at a specific timeshare property may exchange a timeshare period for another timeshare period at the same or another timeshare property under common management does not transform the single-site timeshare plan into a multisite timeshare plan.

(23) "Timeshare disclosure statement" means a written statement that includes the information required by Section 221.032 [~~201.032~~].

(24) [~~(23)~~] "Timeshare estate [~~expenses~~]" means an arrangement under which the purchaser receives a right to occupy [~~expenditures, charges, or liabilities for the operation of~~] a timeshare property and an estate interest in the real property [~~or timeshare system, including any allocations to maintain reserves but excluding any purchase money payable for timeshare interests:~~

[~~(A) incurred in connection with a timeshare interest by or on behalf of the owner of all timeshare interests in a timeshare property; and~~

[~~(B) imposed on timeshare interests by the managing entity~~].

(25) [~~(24)~~] "Timeshare interest" means a timeshare estate or timeshare use.

(26) [~~(25)~~] "Timeshare instrument" means a master deed, master lease, declaration, or any other instrument used in the creation of a timeshare plan [~~regime~~].

[~~(26) "Timeshare liability" means the liability for timeshare expenses allocated to each timeshare interest.~~]

(27) "Timeshare period" means the period within which the purchaser of a timeshare interest is entitled to the exclusive possession, occupancy, and use of an accommodation [~~a timeshare unit and to the general use of all amenities~~].

(28) "Timeshare plan" means any arrangement, plan, scheme, or similar method, excluding an exchange program but including a membership agreement, sale, lease, deed, license, or right-to-use agreement, by which a purchaser, in exchange for consideration, receives an ownership right in or the right to use accommodations for a period of time less than a year during a given year, but not necessarily consecutive years.

(29) [~~(28)~~] "Timeshare property" means:

(A) one or more [~~all real property that is subject to a timeshare declaration, including all~~] accommodations and any related amenities subject to the same timeshare instrument; and

(B) any other property or property rights appurtenant to the accommodations and amenities.

[~~(29) "Timeshare regime" means the real property use that is created by the filing and recordation of a master deed, master lease, or declaration.~~]

(30) [~~"Timeshare unit" means any accommodation that is divided into timeshare periods.~~

[~~(31)~~] "Timeshare use" means any arrangement [~~other than a hotel or motel operation, whether by lease, rental agreement, license, use agreement or other means,~~] under which the purchaser receives a right to occupy [~~use an accommodation or amenities or both for~~] a timeshare property [~~period on a recurring basis~~], but under which the purchaser does not receive an [~~a freehold~~] estate interest [~~or an estate for years~~] in the [~~a~~] timeshare property.

[~~(32) "Timeshare fees" means an amount assessed against or collected from an owner by a managing entity in a fiscal year, without regard to the frequency with which the amount is assessed or collected.~~

[~~(33) "Owner" means a person who holds a legal or equitable interest in a timeshare interest in timeshare property subject to the requirements of this Act.~~

[~~(34) "Timeshare system" means two or more timeshare properties located in separate geographic areas that are:~~

[~~(A) managed by the same managing entity; and~~

[~~(B) subject to a written arrangement or agreement whereby an owner of a timeshare interest in any one of the timeshare properties may use a timeshare unit and the amenities of any of the other timeshare properties as provided in the project instruments.~~]

SECTION ___. Section 221.003, Property Code, is amended by adding Subsection (d) to read as follows:

(d) A timeshare property subject to this chapter is not subject to Chapter 209 unless an individual timeshare owner continuously occupies a single timeshare property as the owner's primary residence 12 months of the year.

SECTION ___. Section 221.011, Property Code, as amended by Chapter 1276 (House Bill 3507), Acts of the 78th Legislature, Regular Session, 2003, and Sections 221.012, 221.013, and 221.014, Property Code, are amended to read as follows:

Sec. 221.011. DECLARATION. (a) The developer of a timeshare plan any part of which is located in this state must record the timeshare instrument in this state. When a person [~~who is a developer, the sole owner, or the co-owner of a building or proposed building or buildings~~] expressly declares an intent to subject the property to a timeshare plan through the recordation of a timeshare instrument [~~master deed, master lease, or declaration~~] that sets forth the information provided in Subsections (b) and (c), [~~and that sets forth the intent to submit that property to a timeshare regime,~~] that property shall be established thenceforth as a timeshare plan [~~regime~~].

(b) The declaration made in a timeshare instrument recorded under this section must include:

(1) a legal description of the timeshare property, including a ground plan indicating the location of each existing or proposed building included in [~~to be constructed on~~] the timeshare plan [~~property~~];

(2) a description of each existing or proposed accommodation [~~timeshare unit~~], including the location and square footage of each unit and an interior floor plan of each existing or proposed building;

(3) a description of any [~~the~~] amenities furnished or to be furnished to the purchaser;

(4) a statement of the fractional or percentage part that each timeshare interest bears to the entire timeshare plan [~~regime~~];

(5) if applicable, a statement that the timeshare property is part of a multisite timeshare plan [~~system~~]; and

(6) any additional provisions that are consistent with this section.

(c) Any timeshare interest created under this section is subject to [~~an interest in real property within the meaning of~~] Section 1101.002(5), Occupations Code, but Sections 1101.351(a)(1) and (c), Occupations Code, do not apply to the acts of an exchange company in exchanging timeshare periods [~~under a timeshare program~~].

[~~(d) Any timeshare interest located wholly without this state may be sold or otherwise disposed of within this state if the timeshare property is in full compliance with the legal requirements of and may be validly sold or otherwise disposed of as a timeshare property in the jurisdiction in which the timeshare property is located and if all information required in this section is included in the disclosure statement.~~]

Sec. 221.012. CONVEYANCE AND ENCUMBRANCE. Once the property is established as a timeshare plan [~~regime~~], each timeshare interest may be individually conveyed or encumbered and shall be entirely independent of all other timeshare interests in the same timeshare property. Any title or interest in a timeshare interest may be recorded.

Sec. 221.013. COMMON OWNERSHIP. (a) Any timeshare interest may be jointly or commonly owned by more than one person.

(b) A timeshare estate may be jointly or commonly owned in the same manner as any other real property interest in this state.

Sec. 221.014. PARTITION. An action for partition of a timeshare interest may not be maintained during the term of a timeshare plan [~~unless expressly permitted by the declaration~~].

SECTION ___. Subchapter C, Chapter 221, Property Code, is amended by amending Sections 221.021, 221.022, 221.023, 221.024, and 221.025 and adding Section 221.026 to read as follows:

Sec. 221.021. REGISTRATION REQUIRED. (a) Except as provided by Subsection (b) or (d), a [~~A~~] person may not offer or dispose of a timeshare interest unless the timeshare plan [~~property~~] is registered with the commission.

(b) Before a registration application for a timeshare plan is submitted or completed, a [~~A~~] developer or any person acting on the developer's [~~his~~] behalf may accept a reservation and a deposit from a [~~the~~] prospective purchaser if the deposit is placed in a segregated [~~an~~] escrow account with an independent escrow agent and if the deposit is fully refundable at any time at the request of the purchaser. The deposit may not be forfeited unless the purchaser affirmatively creates a binding obligation by a subsequent written instrument.

(c) A developer or any person [~~anyone~~] acting on the developer's [~~his~~] behalf may not offer or dispose of [~~or encumber~~] a timeshare interest during any period within which there is in effect an order by the commission or by any court of competent jurisdiction revoking or suspending the registration of the timeshare plan [~~property~~] of which such timeshare interest is a part.

(d) At the developer's request, the commission may authorize the developer to conduct presales before a timeshare plan is registered if the registration application is administratively complete, as determined by the commission or as established by commission rule. The authorization for presales permits the developer to offer and dispose of timeshare interests during the period the application is in process. To obtain a presales authorization, the developer must:

(1) submit a written request to the commission for an authorization to conduct presales;

(2) submit an administratively complete application for registration, including appropriate fees and exhibits required by the commission; and

(3) provide evidence acceptable to the commission that all funds received by the developer will be placed with an escrow agent with instructions requiring the funds to be retained until a registration application is complete as determined by the commission.

(e) During the presales authorization period, the developer must:

(1) provide to each purchaser and prospective purchaser a copy of the proposed timeshare disclosure statement that the developer submitted to the commission with the initial registration application; and

(2) offer each purchaser the opportunity to cancel the purchase contract as provided by Section 221.041.

(f) The developer must:

(1) give each purchaser and prospective purchaser a copy of the proposed timeshare disclosure statement submitted to the commission with the registration application; and

(2) provide the purchaser an opportunity to cancel the purchase contract as provided by Section 221.041 after the registration is completed if the commission determines that a materially adverse change exists between the disclosures contained in the proposed timeshare disclosure statement and the final timeshare disclosure statement approved by the commission.

(g) The requirements of this subchapter remain in effect during the period the developer offers or disposes of timeshare interests of the timeshare plan registered with the commission. The developer must notify the commission in writing when all of the timeshare interests of a timeshare plan have been disposed of.

Sec. 221.022. APPLICATION FOR REGISTRATION. (a) An application for registration filed under this section must include a timeshare disclosure statement and any required exchange disclosure statement required by Section 221.033, recorded [~~201.033, certified~~] copies of all timeshare instruments, and other information as may be required by the commission. If the timeshare property is a newly developed property, recorded copies of the timeshare instruments must be provided promptly after recorded copies are available from the entity with which the instruments are recorded. If existing or proposed accommodations are in a condominium, an applicant who complies with this section is not required to prepare or deliver a condominium information statement or a resale certificate as described by Chapter 82.

(b) If existing or proposed accommodations [~~timeshare units~~] are in a condominium or similar development, the application for registration must contain the project instruments of that development and affirmatively indicate that the creation and disposition of timeshare interests are not prohibited by those instruments. If the project instruments do not expressly authorize the creation and disposition of timeshare interests, the application must contain evidence that existing owners of the condominium development were provided written notice, at least 60 days before the application for registration, that timeshare interests would be created and sold. If the project instruments prohibit the creation or disposition of timeshare interests, the application must contain a certification by the authorized representative of all existing owners that the project instruments have been properly amended to permit that creation and disposition.

(c) The commission may accept an abbreviated registration application from a developer of a timeshare plan if all accommodations in the plan are located outside this state. The developer must file written notice of the intent to register under this section not later than the 15th day before the date the abbreviated application is submitted.

(d) A developer of a timeshare plan with any accommodation located in this state may not file an abbreviated application unless the developer is a successor in interest after a merger or acquisition and the previous developer registered the timeshare plan in this state preceding the merger or acquisition.

(e) A developer filing an abbreviated application must provide:

(1) the legal name and any assumed names and the principal office location, mailing address, telephone number, and primary contact person of the developer;

(2) the name, location, mailing address, telephone number, and primary contact person of the timeshare plan;

(3) the name and address of the developer's authorized or registered agent for service of process in this state;

(4) the name, primary office location, mailing address, and telephone number of the managing entity of the timeshare plan;

(5) the certificate or other evidence of registration from any jurisdiction in which the timeshare plan is approved or accepted;

(6) the certificate or other evidence of registration from the appropriate regulatory agency of any other jurisdiction in the United States in which some or all of the accommodations are located;

(7) a declaration stating whether the timeshare plan is a single-site timeshare plan or a multisite timeshare plan;

(8) if the plan is a multisite timeshare plan, a declaration stating whether the plan consists of specific timeshare interests or nonspecific timeshare interests;

(9) a disclosure of each jurisdiction in which the developer has applied for registration of the timeshare plan and whether the timeshare plan, the developer, or the managing entity used were denied registration or were the subject of a disciplinary proceeding;

(10) if requested by the commission, copies of any disclosure documents required to be provided to purchasers or filed with any jurisdiction that approved or accepted the timeshare plan;

(11) the appropriate filing fee; and

(12) any other information reasonably requested by the commission or required by commission rule.

(f) A foreign jurisdiction providing evidence of registration as provided by Subsection (e)(6) must have registration and disclosure requirements that are substantially similar to or stricter than the requirements of this chapter.

(g) The commission shall investigate all matters relating to the application and may in its discretion require a personal inspection of the proposed timeshare property by any persons designated by it. All direct expenses incurred by the commission in inspecting the property shall be borne by the applicant. The commission may require the applicant to pay an advance deposit sufficient to cover those expenses.

Sec. 221.023. AMENDMENT OF REGISTRATION. The developer shall [~~or managing entity shall promptly~~] file amendments to the registration reporting to the commission any materially [~~material and~~] adverse change in any document contained in the registration not later than the 30th day after the date the developer knows or reasonably should know of the change. The developer may continue to offer and dispose of timeshare interests under the existing registration pending review of the amendments by the commission if the materially adverse change is disclosed to prospective purchasers.

Sec. 221.024. POWERS OF COMMISSION. (a) The commission may prescribe and publish forms and adopt rules necessary to carry out the provisions of this chapter and may suspend or revoke the registration of any developer, place on probation the registration of a developer that has been suspended or revoked, reprimand a developer, impose an administrative penalty of not more than $10,000, or take any other disciplinary action authorized by this chapter [~~seller~~] if, after notice and hearing, the commission determines that a developer [~~seller~~] has materially violated

this chapter, the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), or the Contest and Gift Giveaway Act (Chapter 40, Business & Commerce Code). [~~The commission may bring suit in a district court of Travis County, Texas, to enjoin a violation of this Act or for any other relief as the court may deem appropriate.~~]

(b) The commission may:

(1) authorize specific employees to conduct hearings and issue final decisions in contested cases; and

(2) [~~shall~~] establish reasonable fees for forms and documents it provides to the public and for the filing or registration of documents required by this chapter.

(c) If the commission initiates a disciplinary proceeding under this chapter, the person is entitled to a hearing before the commission or a hearing officer appointed by the commission. The commission by rule shall adopt procedures to permit an appeal to the commission from a determination made by a hearing officer in a disciplinary action.

(d) The commission shall set the time and place of the hearing.

(e) A disciplinary procedure under this chapter is governed by the contested case procedures of Chapter 2001, Government Code.

(f) The commission may file a suit in a district court of Travis County to prevent a violation of this chapter or for any other appropriate relief.

(g) Judicial review of a commission order imposing an administrative penalty is:

(1) instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) by trial de novo.

Sec. 221.025. EFFECT OF REGISTRATION: SALE EXEMPT FROM SECURITIES ACT REGISTRATION. A developer's compliance with [~~The filing of a registration under~~] this chapter exempts the developer's offer and disposition of [~~sale of~~] timeshare interests subject to this chapter from registration under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

Sec. 221.026. ISSUANCE AND RENEWAL OF REGISTRATION. (a) The commission by rule shall adopt requirements for the issuance and renewal of a developer's registration under this chapter, including:

(1) the form required for application for registration or a renewal of registration; and

(2) any supporting documentation required for registration or renewal of registration.

(b) The commission shall issue or renew a registration under this chapter for a period not to exceed 24 months.

(c) The commission may assess and collect a fee for the issuance or renewal of a registration under this chapter.

(d) The commission may assess and collect a late fee if the commission has not received the fee or any supporting documentation required before the 61st day after the date a registration is issued or renewed under this section.

(e) Failure to pay a renewal fee or late fee is a violation of this chapter.

SECTION ___. Sections 221.031 and 221.032, Property Code, are amended to read as follows:

Sec. 221.031. ADVERTISEMENTS AND PROMOTIONS [~~PROMOTIONAL DISCLOSURE STATEMENT~~]. (a) At any time, the commission may request a developer to file for review by the commission any advertisement used in this state by the developer in connection with offering a timeshare interest. The developer shall provide the advertisement not later than the 15th day after the date the commission makes the request. If the commission determines that the advertisement violates this chapter or Chapter 40, Business & Commerce Code, the commission shall notify the developer in writing, stating the specific grounds for the commission's determination not later than the 15th day after the date the commission makes its determination. The commission may grant the developer provisional approval for the advertisement if the developer agrees to correct the deficiencies identified by the commission. A developer, on its own initiative, may submit any proposed advertisement to the commission for review and approval by the commission.

(b) Any advertisement that contains a promotion in connection with the offering of a timeshare interest must comply with Chapter 40, Business & Commerce Code.

(c) Any advertisement that contains a [~~Before the use of any~~] promotion in connection with the offering of a timeshare interest must include, in addition to any disclosures required under Chapter 40, Business & Commerce Code, [~~the person who intends to use the promotion shall include~~] the following [~~information in its advertisements to the prospective purchaser~~]:

(1) a statement to the effect that the promotion is intended to solicit purchasers of timeshare interests;

(2) if applicable, a statement to the effect that any person whose name is obtained during the promotion may be solicited to purchase a timeshare interest;

(3) the full name of the developer [~~and seller~~] of the timeshare property; and

(4) if applicable, the full name and address of any marketing company involved in the promotion of the timeshare property, excluding the developer or an affiliate or subsidiary of the developer[~~;~~

[~~(5) the complete rules of the promotion; and~~

[~~(6) the method of awarding, the odds of winning, a statement of the retail value of prizes, gifts, or other benefits under the promotion as set forth in Subsection (b) of this section, the geographic region in which the promotion is being conducted, the beginning and ending dates of the promotion, and the date by which each prize, gift, or benefit will be awarded or conferred~~].

[~~(b) For the purposes of this section, the retail value of the item is the price at which a substantial number of sales of the exact item, having the same manufacturer, brand, model number, and type, have been made to members of the general public by at least two principal retail outlets in the State of Texas during the six months immediately preceding the offering of the prize or gift described in the promotion. However, if a substantial number of sales of a particular prize have not been made in the State of Texas in the six months immediately preceding the offering of the prize or gift in a promotion or if the developer elects, then the retail value of the prize or gift is the actual unit cost of the prize or the gift, net of any discounts or rebates to the developer, plus 200 percent.~~

[~~Provided, however, in the event a prize or gift involves lodging, airfare, trips, or recreational activity, the retail value shall be the retail sales price of the lodging, airfare, trips, or recreational activity to a member of the general public not involved in a promotional or other discount transaction.~~]

Sec. 221.032. TIMESHARE DISCLOSURE STATEMENT. (a) Before the signing of any agreement [~~or contract~~] to acquire a timeshare interest, the developer shall provide a timeshare disclosure statement to the prospective purchaser and shall obtain from the purchaser a written acknowledgement of receipt of the timeshare disclosure statement.

(b) The timeshare disclosure statement must include:

(1) the type of timeshare plan offered and the name and address of:

(A) the developer;

(B) the single site or specific site offered for a single-site or multisite timeshare plan, including a specific timeshare interest; and

(C) each component site for a multisite timeshare plan, including a description of the component site [~~and the name and specific location of the timeshare property~~];

(2) a description of the existing or proposed accommodations, including the type and number of timeshare interests in the accommodations, and, if the accommodations are proposed or incomplete, a schedule for commencement, completion, and availability of the accommodations [~~amenities, timeshare property, and any project or development within which the timeshare property is located or of which it is a part; the total number of timeshare units in the timeshare property and whether and under what circumstances that number may be increased or decreased; and, if a timeshare interest includes amenities not yet in existence, the commencement and completion schedule of the proposed amenities~~];

(3) a description of any existing or proposed amenities of the timeshare plan and, if the amenities are proposed or incomplete, a schedule for commencement, completion, and availability of the amenities [~~the timeshare interests currently available for disposition and, if applicable, the types and number of units available~~];

(4) a statement that an association [~~a council of purchasers~~] exists or is expected to be created or that such an association [~~a council~~] does not exist and is not expected to be created and, if such an association [~~a council~~] exists or is reasonably contemplated, a description of its powers and responsibilities;

(5) if applicable, copies of the following documents, including any amendments to the documents:

(A) the declaration;

(B) the association articles of incorporation;

(C) the association bylaws;

(D) the association rules; and

(E) any lease or contract, excluding the purchase contract and other loan documents required to be signed by the purchaser at closing;

(6) the name and principal address of the managing entity and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it;

(7) the current annual [~~(6) a complete~~] budget, if available, or the projected annual budget for the timeshare plan or timeshare properties managed by the same managing entity [~~for the operation of the timeshare property for a period of one year after the first disposition of a timeshare interest in the property, and thereafter, the current operating budget~~], which [~~operating budget~~] must include:

(A) a statement of the amount reserved or budgeted for repairs, replacements, and refurbishment [~~the total amount included as a reserve for the maintenance of the timeshare property and for the repair or replacement of personal property or fixtures~~];

(B) the projected common expense liability, if any, by category of expenditure for the timeshare plan or timeshare properties managed by the same managing entity [~~total amount of any other reserve and the purpose of the reserve~~];

(C) [~~the projected timeshare liability expressed by categories of expenditure for all timeshare interests;~~

[~~(D) the timeshare liability projected by categories of expenditures for each timeshare interest;~~

[~~(E)~~] the name and address of the person who prepared the operating budget; and

(D) [~~(F)~~] the assumptions on which the operating budget is based;

(8) the projected assessments and [~~(7)~~] a description of the [~~nature and estimated amount of any timeshare liability that may in the future be assessed and the~~] method for calculating and apportioning those assessments among purchasers [~~and formula for assessing the timeshare liability~~];

(9) [~~(8)~~] a description of any lien, defect, or encumbrance on or affecting title to the timeshare interest and, if applicable, a copy of each written warranty provided by the developer [~~service that the developer or person acting on his behalf provides or expense that is paid that reasonably may be expected to become a timeshare liability, and the projected timeshare liability attributable to that service or expense~~];

(10) [~~(9)~~] a description of any bankruptcy, pending civil or criminal suit, adjudication, or disciplinary action material to the timeshare interest of which the developer has knowledge [~~the existing or proposed amenities of the timeshare property and, if the amenities are proposed or not yet complete or fully functional, a schedule for the projected commencement, completion, and availability of those amenities~~];

(11) any current or anticipated [~~(10) a description and amount of any current or expected dues, assessments,~~] fees[~~,~~] or charges to be paid by timeshare purchasers for the use of any [~~accommodations or~~] amenities related to the timeshare plan [~~or for any other purpose~~];

[~~(11) a description of any unsatisfied final judgment against the developer, seller, managing entity, or exchange company with which the developer is under contract, but not including any individual sales agent or representative who offers a timeshare interest;~~]

(12) [~~a description and status of any pending lawsuit or administrative action of which the developer has actual knowledge that may materially affect a timeshare interest;~~

[~~(13)~~] a description and amount of insurance coverage provided for the protection of the purchaser;

(13) [~~(14)~~] the extent to which a timeshare interest may become subject to a tax lien or other lien arising out of claims against purchasers of different timeshare interests;

(14) [~~(15)~~] a description of those matters required by Section 221.041 [~~201.041~~];

(15) [~~(16)~~] a statement disclosing any right of first refusal or other restraint on the transfer of all or any portion of a timeshare interest;

(16) [~~(17)~~] a statement disclosing that any deposit made in connection with the purchase of a timeshare interest must [~~will~~] be held by [~~in~~] an escrow agent [~~account~~] until expiration of any right to cancel the contract and that any deposit must be [~~or any later time specified in the contract and will be~~] returned to the purchaser if the purchaser [~~he~~] elects to exercise the [~~his~~] right of cancellation; or, if the commission accepts from the developer a surety bond, irrevocable letter of credit, or other form of financial assurance instead of an escrow deposit, a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other form of financial assurance in an amount equal to or in excess of the funds that would otherwise be held by an escrow agent and that the deposit must be returned if the purchaser elects to exercise the right of cancellation;

(17) [~~(18)~~] if applicable, a statement that the assessments [~~timeshare property is part of a timeshare system and that timeshare fees~~] collected from the purchasers [~~owners~~] may be placed in a common account with the assessments [~~timeshare fees~~] collected from the purchasers [~~owners~~] of other timeshare properties managed by the same managing entity [~~participating in the timeshare system~~]; and

(18) [~~(19)~~] any other information the commission determines is necessary to protect prospective purchasers or to implement the purpose of this chapter [~~material circumstances concerning a timeshare interest~~].

(c) The developer may include any other information in the timeshare disclosure statement on approval by the commission.

(d) A developer who offers a multisite timeshare plan also must fully disclose the following information in written, graphic, or tabular form:

(1) a description of each component site, including the name and address of each component site;

(2) the number of accommodations and timeshare periods, expressed in periods of seven-day use availability, that are committed to the plan and available for use by the purchasers;

(3) a statement indicating that, on an annual basis, the sum of the nights that purchasers are entitled to use the accommodations does not exceed the number of nights the accommodations are available for use by the purchasers;

(4) each type of accommodation, categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator;

(5) a description of the amenities at each component site available for use by the purchasers;

(6) a description of the reservation system, which must include:

(A) the entity responsible for operating the reservation system;

(B) a summary of the rules governing access to and use of the reservation system; and

(C) the existence of and explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first-come, first-served basis;

(7) a description of any right to make additions to, substitutions in, or deletions from accommodations, amenities, or component sites, and a description of the basis on which accommodations, amenities, or component sites may be added to, substituted in, or deleted from the multisite timeshare plan;

(8) a description of the purchaser's liability for any fees associated with the multisite timeshare plan;

(9) the location and anticipated relative demand of each component site in the multisite timeshare plan and any periodic adjustment or amendment to the reservation system that may be necessary to accommodate actual purchaser use patterns or changes in purchaser use demand for the accommodations existing during that period; and

(10) any other information the commission determines is necessary to protect prospective purchasers or to implement the purpose of this chapter.

(e) A developer who offers a multisite timeshare plan may include any other information in the timeshare disclosure statement on approval by the commission.

(f) A developer who offers a nonspecific timeshare interest in a multisite timeshare plan must disclose the information prescribed by Subsection (b) for each component site.

(g) If a timeshare plan is located wholly outside this state, the commission may permit the developer to submit a timeshare disclosure statement the developer is currently providing purchasers or an equivalent timeshare disclosure statement filed for the timeshare plan in another state if the current statement or the equivalent statement substantially complies with the requirements of this subchapter. This subsection does not exempt the developer from other requirements of this chapter.

SECTION ___. Section 221.033(a), Property Code, is amended to read as follows:

(a) Before the signing of any agreement to purchase [~~or contract to acquire~~] a timeshare interest in which a prospective purchaser is also offered participation in any exchange program, the developer shall also deliver to the prospective purchaser the exchange disclosure statement of any exchange company whose service is advertised or offered by the developer or other person in connection with the disposition.

SECTION ___. Section 221.034, Property Code, is amended to read as follows:

Sec. 221.034. EXEMPT OFFERINGS AND DISPOSITIONS; COMMUNICATIONS [~~WHEN DISCLOSURE NOT REQUIRED~~]. (a) An offering or disposition is exempt from this chapter if it is [~~A disclosure statement need not be delivered in the case of~~]:

(1) a gratuitous offering or disposition of a timeshare interest;

(2) a disposition pursuant to a court order;

(3) a disposition by a governmental agency;

(4) a disposition by foreclosure or deed in lieu of foreclosure;

(5) an offering or [~~a~~] disposition by an association of its own timeshare interest acquired through foreclosure, deed in lieu of foreclosure, or gratuitous transfer [~~that may be canceled by the purchaser without penalty at any time and for any reason~~];

(6) an offering or [~~a~~] disposition of all timeshare interests in a timeshare plan [~~regime~~] to not more than five persons;

(7) an offering or [~~a~~] disposition of a timeshare interest in a timeshare property situated wholly outside this state under a contract executed wholly outside this state, if there has been no offering to the purchaser within this state;

(8) an offering or [~~a~~] disposition of a timeshare interest to a purchaser who is not a resident of this state under a contract executed wholly outside this state, if there has been no offering to the purchaser within this state; [~~or~~]

(9) the offering or redisposition of a timeshare interest by a purchaser who acquired the interest for the purchaser's [~~his~~] personal use; or

(10) the offering or disposition of a rental of an accommodation for a period of three years or less.

(b) If a developer has a timeshare plan registered under this chapter and is subject to Section 221.024, the developer may offer or dispose of an interest in a timeshare plan that is not registered under this chapter to a person who has previously executed a contract for the purchase of or is the owner of a timeshare interest in a timeshare plan created by the developer. A developer under this subsection is exempt from Sections 221.021, 221.022, 221.023, 221.032, 221.041, 221.042, 221.043, 221.061, 221.071(a)(1), 221.071(a)(8), 221.074, and 221.075 if the developer:

(1) permits the purchaser to cancel the purchase contract before the sixth day after the date the contract is signed; and

(2) provides the purchaser all timeshare disclosure documents required by law to be provided in the jurisdiction in which the timeshare property is located.

(c) The following communications are not advertisements under this chapter:

(1) any stockholder communication, including an annual report or interim financial report, proxy material, registration statement, securities prospectus, timeshare disclosure statement, or other material required to be delivered to a prospective purchaser by a state or federal governmental entity;

(2) any oral or written statement disseminated by a developer to broadcast or print media, excluding:

(A) paid advertising or promotional material relating to plans for acquiring or developing timeshare property; and

(B) the rebroadcast or other dissemination of any oral statements by a developer to a prospective purchaser or the distribution or other dissemination of written statements, including newspaper or magazine articles or press releases, by a developer to prospective purchasers;

(3) the offering of a timeshare interest in a national publication or by electronic media that is not directed to or targeted at any individual located in this state;

(4) any audio, written, or visual publication or material relating to the availability of any accommodations for transient rental if:

(A) a sales presentation is not a term or condition of the availability of the accommodations; and

(B) the failure of the transient renter to take a tour of the timeshare property or attend a sales presentation does not result in a reduction in the level of services or an increase in the rental price that would otherwise be available to the renter; or

(5) any follow-up communication with a person relating to a promotion if the person previously received an advertisement relating to the promotion that complied with Section 221.031.

(d) The following communications are exempt from this chapter if they are delivered to a person who has previously executed a contract for the purchase of or is an owner of a timeshare interest in a timeshare plan:

(1) any communication addressed to and relating to the account of the person; or

(2) any audio, written, or visual publication or material relating to an exchange company or program if the person is a member of that exchange company or program.

SECTION ___. Sections 221.041, 221.042, and 221.043, Property Code, are amended to read as follows:

Sec. 221.041. PURCHASER'S RIGHT TO CANCEL. (a) A purchaser may cancel a purchase contract [~~to purchase a timeshare interest~~] before the sixth day after the date the purchaser signs and receives a copy of the purchase contract or receives the required timeshare disclosure statement, whichever is later [~~contract is signed~~].

(b) [~~If a purchaser does not receive a copy of the contract at the time the contract is signed, the purchaser may cancel the contract to purchase the timeshare interest before the sixth day after the date the contract is received by the purchaser.~~

[~~(c)~~] A purchaser may not waive the [~~his~~] right of cancellation under this section. A contract containing a waiver is voidable by the purchaser.

Sec. 221.042. NOTICE; REFUND. (a) If a purchaser elects to cancel a purchase contract under Section 221.041 [~~201.041~~], the purchaser [~~he~~] may do so by hand-delivering notice of cancellation to the developer, [~~seller or~~] by mailing notice by prepaid United States mail to the developer [~~seller~~] or to the developer's [~~seller's~~] agent for service of process, or by providing notice by overnight common carrier delivery service to the developer or the developer's agent for service of process.

(b) Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded on or before the 30th [~~21st~~] day after the date on which the developer [~~seller~~] receives a timely notice of cancellation or on or before the fifth day after the date the developer receives good funds from the purchaser, whichever is later.

Sec. 221.043. CONTRACT REQUIREMENTS. (a) Each purchase contract [~~Attached to each contract shall be a separate page identified as Exhibit A. Exhibit A shall be provided to each purchaser at the time the contract is signed and~~] shall contain the following information. The statements required by this subsection [~~Subdivisions (1)~~] and Subsection (c)(8) [~~(3)~~] shall be provided in a conspicuous manner and in the

exact language set forth in this section with the developer's [~~seller's~~] name and address, the date of the last day of the fiscal year, and the address of the managing entity inserted where indicated:

[~~(1)~~] "PURCHASER'S RIGHT TO CANCEL.

"(A) BY SIGNING THIS CONTRACT YOU ARE INCURRING AN OBLIGATION TO PURCHASE A TIMESHARE INTEREST. YOU MAY, HOWEVER, CANCEL THIS CONTRACT WITHOUT PENALTY OR OBLIGATION BEFORE THE SIXTH DAY AFTER THE DATE YOU SIGN AND RECEIVE A COPY OF THE PURCHASE CONTRACT, OR RECEIVE THE REQUIRED TIMESHARE DISCLOSURE STATEMENT, WHICHEVER IS LATER [~~THE CONTRACT. IF YOU DO NOT RECEIVE A COPY OF THE CONTRACT AT THE TIME THE CONTRACT IS SIGNED, YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR OBLIGATION BEFORE THE SIXTH DAY AFTER THE DATE YOU RECEIVE A COPY OF THE CONTRACT~~].

"(B) IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MAY DO SO BY EITHER HAND-DELIVERING NOTICE OF CANCELLATION TO THE DEVELOPER, [~~SELLER OR~~] BY MAILING NOTICE BY PREPAID UNITED STATES MAIL TO THE DEVELOPER [~~SELLER~~] OR THE DEVELOPER'S [~~SELLER'S~~] AGENT FOR SERVICE OF PROCESS, OR BY PROVIDING NOTICE BY OVERNIGHT COMMON CARRIER DELIVERY SERVICE TO THE DEVELOPER OR THE DEVELOPER'S AGENT FOR SERVICE OF PROCESS. YOUR NOTICE OF CANCELLATION IS EFFECTIVE ON THE DATE SENT OR DELIVERED TO (INSERT NAME OF DEVELOPER [~~SELLER~~]) AT (INSERT ADDRESS OF DEVELOPER [~~SELLER~~]). FOR YOUR PROTECTION, SHOULD YOU DECIDE TO CANCEL YOU SHOULD EITHER SEND YOUR NOTICE OF CANCELLATION BY CERTIFIED MAIL WITH A RETURN RECEIPT REQUESTED OR OBTAIN A SIGNED AND DATED RECEIPT IF DELIVERING IT IN PERSON OR BY OVERNIGHT COMMON CARRIER.

"(C) A PURCHASER SHOULD NOT RELY ON STATEMENTS OTHER THAN THOSE INCLUDED IN THIS CONTRACT AND THE DISCLOSURE STATEMENT."

[~~(2) A statement disclosing the amount of the timeshare fees, on a monthly or annual basis, which are being assessed currently against or collected from the owners of a timeshare interest. Immediately following the timeshare fee disclosure statement shall be a statement that the timeshare fees collected by the managing entity may be used to pay for the administrative and operating expenses of the property; and~~

[~~(3) "AS A TIMESHARE OWNER YOU HAVE A RIGHT TO REQUEST A WRITTEN ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. THIS STATEMENT IS PREPARED ANNUALLY BY THE MANAGING ENTITY AND WILL BE AVAILABLE NO LATER THAN THE 90TH DAY FOLLOWING (INSERT THE DATE OF THE LAST DAY OF THE FISCAL YEAR). YOU MAY REQUEST THE STATEMENT BY WRITING TO (INSERT ADDRESS OF THE MANAGING ENTITY)."~~]

(b) Immediately following the required statements in Subsection (a) [~~on Exhibit A~~] shall be a space reserved for the signature of the purchaser. [~~The seller shall obtain the purchaser's signature on Exhibit A at the time the contract is signed.~~]

(c) The purchase contract must also include the following:

(1) the name and address of the developer [~~seller~~] and the address of the timeshare property or the address of any available timeshare interest being offered [~~unit~~];

(2) an agreement describing the cancellation policy prescribed by Section 221.041 [~~whether the purchaser visited the location of the timeshare unit before signing the contract~~];

(3) [~~an agreement by the seller that if the purchaser timely exercises the right of cancellation under the contract, all payments made by the purchaser to the seller in connection with the contract shall be returned to such purchaser before the 21st day after the seller receives notice of cancellation;~~

[~~(4)~~] the name of the person or persons primarily [~~actively~~] involved in the sales presentation on behalf of the developer [~~seller~~];

(4) a statement disclosing the amount of the periodic assessments currently assessed against or collected from the purchasers of the timeshare interest, immediately followed by a statement providing that collected assessments will be used by the managing entity to pay for expenditures, charges, reserves, or liabilities relating to the operation of the timeshare plan or timeshare properties managed by the managing entity;

(5) a statement disclosing [~~warranty~~] that the timeshare common properties are not mortgaged, unless the mortgage contains a nondisturbance clause which fully protects the use and enjoyment rights of each timeshare owner in the event of foreclosure; [~~and~~]

(6) in the event such timeshare interests are sold under a lease, right to use, or membership agreement where free and clear title to the accommodation [~~timeshare unit~~] is not passed to the purchaser [~~buyer~~], then the purchase contract must contain a statement [~~warranty~~] that the timeshare is free and clear; or if subject to a mortgage, the mortgage must contain a nondisturbance clause which fully protects the use and enjoyment rights of each timeshare owner in the event of foreclosure;

(7) the date the purchaser signs the contract; and

(8) the following statement:

"AS A TIMESHARE OWNER, YOU HAVE A RIGHT TO REQUEST A WRITTEN ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. THIS STATEMENT IS PREPARED ANNUALLY BY THE MANAGING ENTITY AND WILL BE AVAILABLE NOT LATER THAN FIVE MONTHS AFTER (INSERT THE DATE OF THE LAST DAY OF THE FISCAL YEAR). YOU MAY REQUEST THE STATEMENT BY WRITING TO (INSERT NAME AND ADDRESS OF THE MANAGING ENTITY)."

(d) The information required to be provided by this section may be provided in the purchase contract or in an exhibit to the purchase contract, or it may be provided in part in both if all of the information is provided.

SECTION ___. Section 221.052, Property Code, is amended to read as follows:

Sec. 221.052. LIABILITY OF DEVELOPER. A developer does not incur any liability arising out of the use, delivery, or publication [~~by the developer~~] to a [~~the~~] purchaser of written information or audio-visual materials provided to it by the exchange company in accordance with Subchapter D, unless [~~. A developer is subject~~

~~to liability arising out of the use, delivery, or publication to the purchaser of materials provided by the exchange company if~~] the developer knows or has reason to know that the materials are inaccurate or false.

SECTION ___. Subchapter G, Chapter 221, Property Code, is amended by amending Sections 221.061, 221.062, and 221.063 and adding Section 221.064 to read as follows:

Sec. 221.061. ESCROW OR TRUST ACCOUNT REQUIRED. (a) A [~~The~~] developer or escrow agent of a timeshare plan [~~other person acting on its behalf~~] shall deposit in [~~establish~~] an escrow or trust account in a federally insured depository 100 percent of all funds received during the purchaser's cancellation period [~~with an escrow agent for the purpose of protecting deposits made by purchasers in connection with proposed dispositions of timeshare interests~~].

(b) An escrow agent owes the purchaser a fiduciary duty.

(c) The escrow agent and the developer shall execute an agreement that includes a statement providing that:

(1) funds may be disbursed to the developer from the escrow or trust account by the agent only:

(A) after the purchaser's cancellation period has expired; and

(B) as provided by the purchase contract, subject to this subchapter; and

(2) if the purchaser cancels the purchase contract as provided by the contract, the funds must be paid to:

(A) the purchaser; or

(B) the developer if the purchaser's funds have been refunded previously by the developer.

(d) If a developer contracts to sell a timeshare interest and the construction of the building in which the timeshare interest is located has not been completed when the cancellation period expires, the developer shall continue to maintain all funds received from the purchaser under the purchase agreement in the escrow or trust account until construction of the building is completed. The documentation required for evidence of completion of construction includes:

(1) a certificate of occupancy;

(2) a certificate of substantial completion;

(3) evidence of a public safety inspection equivalent to Subdivision (1) or (2) from a governmental agency in the applicable jurisdiction; or

(4) any other evidence acceptable to the commission.

Sec. 221.062. [~~ESCROW AMOUNT. Fifty percent of any deposit obtained from a purchaser shall be placed in the escrow account.~~

[~~Sec. 221.063.~~] RELEASE OF ESCROW. (a) The funds or property constituting the escrow or trust deposit may be released from escrow only in accordance with this section.

(b) If the purchaser cancels the purchase contract as provided by the contract, the funds shall be paid to:

(1) the purchaser; or

(2) the developer if the purchaser's funds have been refunded previously by the developer.

(c) If the purchaser defaults in the performance of obligations under the terms of the purchase [~~a~~] contract [~~to purchase a timeshare interest~~], the funds shall be paid to the developer [~~or other person legally entitled to the escrow deposit shall file an application with the escrow agent requesting release of the applicable amount. The application for release of the escrow deposit must be verified and must include:~~

[~~(1) a concise statement by the applicant that the purchaser has materially defaulted in the performance of obligations under the terms of a contract to purchase a timeshare interest and that the applicant and the developer have complied with all terms and obligations of that contract;~~

[~~(2) a complete explanation of the nature of the purchaser's material default under the contract and of the date of its occurrence;~~

[~~(3) a statement that pursuant to the terms of the purchase contract the applicant is entitled to the escrow deposit;~~

[~~(4) a statement that the developer has no knowledge of a dispute between the purchaser and developer and a statement that the purchaser has not, to the applicant's knowledge, made a demand for the return of the deposit; and~~

[~~(5) a statement that the purchaser has not exercised a right of cancellation under Subchapter E~~].

(d) If the developer defaults in the performance of obligations under the purchase contract, the funds shall be paid to the purchaser.

(e) If the funds of the purchaser have not been disbursed previously as provided by Subsections (a)-(d), the funds may be disbursed to the developer by the escrow or trust agent if acceptable evidence of completion of construction is provided.

(f) If there is a dispute relating to the funds in the escrow or trust account, the agent shall maintain the funds in the account until:

(1) the agent receives written directions agreed to and signed by all parties; or

(2) a civil action relating to the disputed funds is filed.

(g) If a civil action is filed under Subsection (f)(2), the escrow or trust account agent shall deposit the funds with the court in which the action is filed.

Sec. 221.063. ALTERNATIVE TO ESCROW OR TRUST ACCOUNT: FINANCIAL ASSURANCE. (a) Instead of the deposit of funds in an escrow or trust account as provided by Section 221.061, the commission may accept from the developer a surety bond, irrevocable letter of credit, or other form of financial assurance, including financial assurance posted in another state or jurisdiction.

(b) The amount of the financial assurance provided under this section must be an amount equal to or more than the amount of funds that would otherwise be placed in an escrow or trust account under Section 221.061(a).

(c) The amount of the financial assurance provided under this section for timeshare property under construction as provided by Section 221.061(d) must be the lesser of:

(1) an amount equal to or more than the amount of funds that would otherwise be placed in an escrow or trust account under that subsection; or

(2) the amount necessary to assure completion of the building in which the timeshare interest is located.

Sec. 221.064. DOCUMENTATION REQUIRED. The escrow or trust account agent or developer shall make documents related to the escrow or trust account or the financial assurance provided available to the commission at the commission's request.

[~~(c) Notwithstanding the other provisions of this section, the escrow agent may release the escrow deposit to the applicant on presentation to the escrow agent of:~~

[~~(1) an affidavit by the developer that the timeshare unit is substantially complete and that no applicable right of cancellation of the contract has been exercised by the purchaser;~~

[~~(2) if funds were placed in the escrow account in connection with the proposed disposition of a timeshare estate, a true and correct copy of the instrument transferring ownership of the timeshare estate to the purchaser free and clear of all liens and encumbrances, except for any encumbrance created by purchaser financing; and~~

[~~(3) if funds were placed in the escrow account in connection with the proposed disposition of a timeshare use, a true and correct copy of a properly executed and recorded nondisturbance agreement executed by the developer and all holders of a lien recorded against the timeshare property and providing that subsequent owners or foreclosing holders of a lien shall take title to the timeshare property subject to the rights of prior purchasers under their contracts of sale.~~

[~~(d) A deposit may not be released from escrow until the escrow agent has provided the purchaser written notice of intent to release the escrow at least 14 days before the release.~~]

SECTION ___. Section 221.071, Property Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A developer [~~seller~~] or other person commits a false, misleading, or deceptive act or practice within the meaning of Subsections (a) and (b) of Section 17.46 of the Texas Deceptive Trade Practices-Consumer Protection Act (Article 17.46 et seq., Business & Commerce Code), by engaging in any of the following acts:

(1) failing to disclose information concerning a timeshare interest required by Subchapter D;

(2) making false or misleading statements of fact concerning the characteristics of accommodations or amenities available to a consumer;

(3) predicting specific or immediate increases in the value of a timeshare interest without a reasonable basis for such predictions;

(4) making false or misleading statements of fact concerning the duration that accommodations or amenities will be available to a consumer;

(5) making false or misleading statements of fact concerning the conditions under which a purchaser of a timeshare interest may exchange the right to occupy a unit for the right to occupy a unit in the same or another timeshare property;

(6) representing that a prize, gift, or other benefit will be awarded in connection with a promotion with the intent not to award that prize, gift, or benefit in the manner represented;

(7) failing to provide a copy of the purchase contract to the purchaser at the time the contract is signed by the purchaser[~~, unless the purchaser requests in writing that the contract be mailed, and the contract is mailed to the purchaser before the end of the next business day~~]; or

(8) failing to provide the annual [~~timeshare fee and expense~~] statement as required by Section 221.074(a) [~~221.074; or~~

[~~(9) furnishing false information in the annual timeshare fee and expense statement as required by Section 221.074~~].

(c) If a developer has substantially complied with this chapter in good faith, a nonmaterial error or omission is not actionable. Any nonmaterial error or omission is not sufficient to permit a purchaser to cancel a purchase contract after the period provided for cancellation expires under this chapter.

SECTION ___. Section 221.072, Property Code, is amended to read as follows:

Sec. 221.072. INSURANCE. Before the disposition of any timeshare interest, the developer or managing entity shall maintain the following insurance with respect to the timeshare property:

(1) property insurance on the timeshare property and any personal property for use by purchasers, other than personal property separately owned by a purchaser, insuring against all risks of direct physical loss commonly insured against, in a total amount, after application of deductibles, of the full replacement cost of the accommodations and amenities of the timeshare property; and

(2) liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, and maintenance of the timeshare property.

SECTION ___. Sections 221.073(a) and (b), Property Code, are amended to read as follows:

(a) A developer [~~or seller~~] subject to this chapter commits an offense if the developer [~~or seller~~] offers or disposes of a timeshare interest in a timeshare property which has not been registered with the commission.

(b) It is not a violation of this section for a developer [~~or seller~~] subject to [~~the provisions of~~] this chapter [~~Act~~] to accept reservations and deposits from prospective purchasers in accordance with Section 221.021(b) or (d) [~~the provisions of Subsection (b) of Section 221.021 of this Act~~].

SECTION ___. Section 221.074, Property Code, is amended to read as follows:

Sec. 221.074. ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. (a) Notwithstanding any contrary [~~a~~] provision of the required timeshare [~~promotional~~] disclosure statement, project instrument, timeshare instrument, or bylaws adopted pursuant to a timeshare instrument, the managing entity shall make a written annual accounting of the operation of the timeshare properties managed by the managing entity to each purchaser who requests an accounting not later than five months [~~the 60th day~~] after the last day of each fiscal year [~~the managing entity shall make available to each owner a written annual accounting of the operation of the timeshare property or timeshare system~~]. The statement shall fairly and accurately represent the collection and expenditure of assessments and include:

(1) a balance sheet;

(2) an income and expense statement [~~which complies with generally accepted accounting principles and reflects the collection and expenditure of timeshare fees~~];

(3) the current operating budget for the timeshare property, timeshare properties managed by the same managing entity, or multisite timeshare plan [~~system~~] required by Section 221.032(b)(7) [~~221.032(b)(6)~~]; and

(4) [~~an accounting identifying any unfunded reserves for capital improvements and maintenance and upkeep of the timeshare property; and~~

[~~(5) the name and address of each member of the board of directors of the council of purchasers or the owners' association, if one exists, and~~] the name, address, and telephone number of a designated representative of the managing entity.

(b) On the request of an owner, the [~~The~~] managing entity of the timeshare plan shall provide the owner with the name and address of each member of the board of directors of the owners' association, if one exists [~~make the fee statement available to owners of record of a timeshare interest as of the last day of the fiscal year as reflected in the managing entity's records~~].

(c) A developer or managing entity shall have an annual independent audit of the financial statements of the timeshare plan or timeshare properties managed by the managing entity performed by a certified public accountant or an accounting firm. The audit must be:

(1) conducted in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, the Governmental Accounting Standards Board, the United States General Accounting Office, or other professionally recognized entities that prescribe auditing standards; and

(2) completed not later than five months after the last day of the fiscal year of the timeshare plan or timeshare property [~~The statement shall be delivered in person or by mail to each person on the board of directors of the council of purchasers or the owners' association, if one exists~~].

(d) Knowingly furnishing false information in the annual timeshare fee and expense statement is a violation of the Deceptive Trade Practices-Consumer Protection Act (Section 17.41 et seq., Business & Commerce Code).

(e) The managing entity of any accommodation located in this state shall post prominently in the registration area of the accommodations [~~each timeshare property~~] the following notice, with the date of the last day of the current fiscal year and the address of the managing entity inserted where indicated:

"AS A TIMESHARE OWNER YOU HAVE A RIGHT TO REQUEST A WRITTEN ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. THIS STATEMENT IS PREPARED ANNUALLY BY THE MANAGING ENTITY AND WILL BE AVAILABLE NO LATER THAN FIVE MONTHS [~~THE 90TH DAY~~] FOLLOWING (INSERT THE DATE OF THE LAST DAY OF THE CURRENT FISCAL YEAR). YOU MAY REQUEST THE STATEMENT, BY WRITING TO (INSERT ADDRESS OF THE MANAGING ENTITY)."

[~~(c) If a request for the statement is received by the managing entity prior to the date by which the statement is available, the statement shall be provided no later than one week after the date the statement becomes available. If a request for the statement is received by the managing entity after the date the statement becomes available, the statement shall be provided no later than two weeks after the date the request is~~

~~received by the managing entity. For the purposes of this section, the statement shall be deemed provided if it is deposited in the mail, properly addressed, with postage prepaid.~~

[~~(f) A managing entity shall provide a separate annual timeshare fee and expense statement for each timeshare property unless the property is part of a timeshare system. A managing entity may provide a consolidated statement for all timeshare properties comprising a timeshare system.~~]

SECTION ___. Sections 221.075(a) and (d), Property Code, are amended to read as follows:

(a) On receipt of a written request filed with the commission by a managing entity before the date on which the statement required by Section 221.074 must be made available, the commission for good cause shown may grant the managing entity an extension of no more than 30 days in which to provide the statement.

(d) A managing entity may not assess against or collect from the purchasers [~~owners~~] of a timeshare property the amount of a penalty incurred under this section.

SECTION ___. Sections 221.076 and 221.077, Property Code, are amended to read as follows:

Sec. 221.076. MANAGING ENTITIES THAT MANAGE MORE THAN ONE TIMESHARE [~~SYSTEM OR~~] PROPERTY. (a) A managing entity that manages two or more single-site timeshare plans [~~properties which are not participants of the same timeshare system~~] may [~~not~~] commingle the assessments [~~timeshare fees~~] collected from purchasers [~~owners~~] of one timeshare plan [~~property~~] with the assessments [~~timeshare fees~~] collected from purchasers [~~owners~~] of any other single-site plan for which it is the managing entity only if the practice is disclosed in the timeshare disclosure statement for each timeshare property and the appropriate statement is included in the declaration for each timeshare property as required by Subchapter B.

(b) [~~A managing entity that manages two or more timeshare systems may not commingle the timeshare fees collected from owners participating in one timeshare system with the timeshare fees collected from owners participating in any other timeshare system.~~

[~~(c)~~)] A managing entity which manages a multisite timeshare plan [~~system~~] may deposit assessments [~~timeshare fees~~] collected from purchasers [~~owners~~] of one timeshare property into a common account with assessments [~~timeshare fees~~] collected from purchasers [~~owners~~] of other timeshare properties participating in the same multisite timeshare plan [~~system~~] only if the practice is disclosed in the timeshare disclosure statement for each timeshare property in the multisite timeshare plan [~~system~~] and the appropriate statement is included in the declaration for each timeshare plan [~~regime~~] as required by Subchapter B.

(c) Nothing in this section shall be construed to allow a managing entity to commingle assessments [~~the timeshare fees~~] of a multisite timeshare plan with the assessments of a separate multisite timeshare plan or a timeshare plan that is not a part of the multisite timeshare plan [~~:~~

[~~(1) separate timeshare systems;~~

[~~(2) separate timeshare properties which are not part of a timeshare system;~~

~~or~~

[~~(3) a timeshare system with the timeshare fees of a separate timeshare property which is not a participant in the timeshare system~~].

Sec. 221.077. AVAILABILITY OF BOOKS AND RECORDS; RECORDS RETENTION. (a) A developer or managing entity, on written request of an owner, shall make available for examination at its registered office or principal place of business and at any reasonable time or times the relevant books and records relating to the collection and expenditure of assessments [~~timeshare fees~~].

(b) A developer or managing entity shall maintain in its records a copy of each purchase contract for an accommodation sold by the developer for a timeshare period unless the contract has been canceled. If a sale of the timeshare estate is pending, the developer shall retain a copy of the contract until a deed of conveyance, agreement for deed, or lease is recorded in the real property records of the county in which the timeshare property is located.

SECTION ___. This article takes effect January 15, 2004, and applies to a developer who offers or disposes of an interest in a timeshare plan and a managing entity that manages a timeshare property under Chapter 221, Property Code, as amended by this article, on or after that date.

SECTION ___. If a timeshare property is registered with the Texas Real Estate Commission before January 15, 2004, the registration expires 24 months after the last anniversary of the date the property was registered, and a developer may renew the registration as provided by Section 221.026, Property Code, as added by this article.

The floor amendment was read.

On motion of Senator Wentworth, Floor Amendment No. 41 was withdrawn.

Floor Amendment No. 42 was not offered.

Senator Harris offered the following amendment to the bill:

Floor Amendment No. 43

Amend **CSHB 7** by adding the following section and renumbering the subsequent sections appropriately:

SECTION ____. Sections 261.051 and 261.052, Health and Safety Code, as amended by H.B. No. 4, Acts of the 78th Legislature, Regular Session, 2003, are amended to read as follows:

Sec. 261.051. DEFINITION. In this subchapter, "municipal hospital management contractor" means a nonprofit corporation, partnership, or sole proprietorship that manages or operates a hospital or provides services under a contract with a municipality or municipal hospital authority.

Sec. 261.052. LIABILITY OF A MUNICIPAL HOSPITAL MANAGEMENT CONTRACTOR. A municipal hospital management contractor in its management or operation of a hospital under a contract with a municipality or a municipal hospital authority is considered a governmental unit for purposes of Chapter 101, 102, and 108, Civil Practice and Remedies Code, and any employee of the contractor is, while performing services under the contract for the benefit of the hospital, an employee of the municipality for the purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code.

The floor amendment was read and was adopted without objection.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 44

Amend **CSHB 7** by adding the following appropriately numbered ARTICLE to the bill and renumbering existing ARTICLES of the bill accordingly:

ARTICLE ___. INDUSTRIALIZED BUILDINGS

SECTION ___.01. Section 1202.001(2), Occupations Code, as amended by Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(2) "Construction site [~~office~~] building" means a commercial structure that is:

(A) not open to the public; and

(B) used for any purpose [~~as an office~~] at a commercial site by a person constructing a building, road, bridge, utility, or other infrastructure or improvement to real property.

SECTION ___.02. Section 1202.003(d), Occupations Code, as added by Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(d) An industrialized building includes a permanent commercial structure and a commercial structure designed to be transported from one commercial site to another commercial site but does not include:

(1) a commercial structure that exceeds three stories or 49 feet in height as measured from the finished grade elevation at the building entrance to the peak of the roof; or

(2) a commercial building or structure that is:

(A) installed in a manner other than on a permanent foundation; and

(B) either:

(i) not open to the public; or

(ii) less than 1,500 square feet in total area and used other than as a school or a place of religious worship.

SECTION ___.03. Section 1202.203, Occupations Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) An approved third-party inspector shall perform on-site inspections of industrialized housing [~~and buildings~~] to be located outside the municipality.

(d) If required by commission rule, an approved third-party inspector shall perform on-site inspections of industrialized buildings to be located outside the municipality.

SECTION ___.04. Section 1202.204(b), Occupations Code, as amended by Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(b) The commission by rule shall exempt a construction site [~~office~~] building from the requirements of this section.

SECTION ___.05. Section 1202.003(c), Occupations Code, is repealed.

SECTION ___.06. The changes in law made by this article in amending Chapter 1202, Occupations Code, apply to any building or structure at a commercial site regardless of the date of installation of that building or structure.

The floor amendment was read.

On motion of Senator Staples, Floor Amendment No. 44 was withdrawn.

Floor Amendment No. 45 was not offered.

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 46

Amend **CSHB 7** by inserting the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the bill appropriately:

SECTION __. (a) Section 32.03, Alcoholic Beverage Code, is amended by adding Subsection (k) to read as follows:

(k) A private club registration permit may not be issued to or maintained by a club for a premises located in a dry county if the club operates a sexually oriented business, as defined by Section 243.002, Local Government Code, on the premises.

(b) Section 32.03(k), Alcoholic Beverage Code, as added by this section, applies only to an application for the issuance or renewal of a private club registration permit filed on or after the effective date of this section. An application filed before the effective date of this section is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

(c) Notwithstanding any other provision of this Act, this section takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this section takes effect on the 91st day after the last day of the legislative session.

The floor amendment was read.

Senator Carona offered the following amendment to the amendment:

Floor Amendment No. 46A

Amend Floor Amendment No. 46 by Carona to **CSHB 7** by striking Subsection (b) of the SECTION added by the amendment (page 1, lines 10-16) and substituting the following:

(b) Section 32.03(k), Alcoholic Beverage Code, as added by this section, applies to a permit issued or renewed on or after the effective date of this section. A permit issued or renewed before the effective date of this section is governed by the law in effect immediately before that date only until the first renewal date for the permit that occurs on or after the effective date of this section, and that law is continued in effect for that purpose.

The amendment to the amendment was read and was adopted without objection.

Question recurring on the adoption of Floor Amendment No. 46 as amended, the amendment as amended was adopted without objection.

Floor Amendment No. 47 was temporarily not offered.

Senator Jackson offered the following amendment to the bill:

Floor Amendment No. 48

Amend **CSHB 7** by adding the following new SECTION, appropriately numbered, and renumbering subsequent SECTIONs of the bill accordingly:

SECTION ____. Subtitle H, Title 6, Transportation Code, is amended by adding Chapter 398 to read as follows:

CHAPTER 398. REGULATION OF OFF-PREMISE SIGNS AND OUTDOOR ADVERTISING GENERALLY

Sec. 398.001. DEFINITIONS. In this chapter:

(1) "Off-premise sign" has the meaning assigned by Section 391.251.

(2) "Outdoor advertising" has the meaning assigned by Section 391.001.

Sec. 398.002. RELOCATION OF OUTDOOR ADVERTISING BECAUSE OF CONSTRUCTION OR OBSTRUCTION. (a) If any outdoor advertising use, structure, or permit may not be continued because of widening, construction, or reconstruction of a highway, the owner of the outdoor advertising is entitled to relocate the use, structure, or permit to another location:

(1) on the same property;

(2) on adjacent property;

(3) if the outdoor advertising is within a municipality or the extraterritorial jurisdiction of a municipality, within that municipality or its extraterritorial jurisdiction; or

(4) on the same highway not more than 50 miles from the previous location.

(b) Relocation under this section shall be in accordance with applicable spacing requirements under this subtitle and shall be to a location where outdoor advertising is permitted under Section 391.031.

(c) If the view and readability of outdoor advertising are obstructed due to a noise abatement or safety measure, a grade change, construction, vegetation, an aesthetic improvement made by an agency of this state, a directional sign, or widening along a highway, the owner of the sign may:

(1) adjust the height of the sign; or

(2) relocate the sign to a location that complies with the spacing requirements under this chapter and in which outdoor advertising is permitted under Section 391.031.

(d) A county or municipality in which the outdoor advertising is located shall, if necessary, provide for the height adjustment or relocation by a special exception to any applicable zoning ordinance.

(e) Notwithstanding any height requirements established under this subtitle, the adjusted or relocated outdoor advertising may be erected to a height and angle to make it clearly visible to traffic on the main-traveled way of the highway and must be the same size as the previous sign.

Sec. 398.003. PROHIBITION OF OUTDOOR ADVERTISING. A governmental entity may not prohibit new outdoor advertising outside the jurisdiction or extraterritorial jurisdiction of a municipality.

Sec. 398.004. ACQUISITION OF PROPERTY THROUGH VOLUNTARY TRANSACTION. A governmental entity that acquires property by gift, purchase, agreement, or exchange may not require that lawfully erected outdoor advertising located on the property be altered or removed from the property without the payment of just compensation.

The floor amendment was read.

On motion of Senator Jackson, Floor Amendment No. 48 was withdrawn.

Senator Ratliff offered the following amendment to the bill:

Floor Amendment No. 49

Amend **CSHB 7** by adding the following appropriately numbered ARTICLE and renumbering existing ARTICLES accordingly:

ARTICLE ____. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

SECTION ____.01. Subchapter C, Chapter 1551, Insurance Code, is amended by adding Section 1551.115 to read as follows:

Sec. 1551.115. LIMITATIONS. The Employees Retirement System of Texas, as trustee, may not contract for or provide a health benefit plan that excludes from participation in the network a general hospital that:

(1) is located in the geographical service area or areas of the health coverage plan that include a county that:

(A) has a population of at least 100,000 and not more than 175,000; and

(B) is located in the Texas-Louisiana border region, as that term is defined in Section 2056.002(e), Government Code; and

(2) agrees to provide medical and health care services under the plan subject to the same terms and conditions as other hospital providers under the plan.

SECTION ____.02. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect on the 91st day after the last day of the legislative session.

The floor amendment was read and was adopted without objection.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 50

Amend **CSHB 7** by adding the following section, appropriately numbered, and renumbering the existing sections appropriately:

SECTION ____. Section 1551.109(a), Insurance Code, is amended to read as follows:

(a) Subject to Section 1551.351, on application to the board of trustees and arrangement for payment of contributions, an individual participating in the group benefits program on August 31, 2003, as a current or former member of a governing body with administrative responsibility over a state agency created under a statute of this state that has statewide jurisdiction and whose employees are covered by this chapter or as a current or former member of [~~the State Board of Education or~~] the

governing body of an institution of higher education remains eligible for participation in a health benefit plan offered under this chapter if a lapse in coverage has not occurred.

The floor amendment was read.

Senator Wentworth offered the following amendment to the amendment:

Floor Amendment No. 50A

Amend Floor Amendment No. 50 to **CSHB 7** by striking the added SECTION and substituting the following SECTION, appropriately numbered, and renumbering the existing sections appropriately:

SECTION ____. Section 1551.109, Insurance Code, is amended to read as follows:

Sec. 1551.109. CONTINUING ELIGIBILITY OF CERTAIN MEMBERS OF BOARDS, COMMISSIONS, AND INSTITUTIONS OF HIGHER EDUCATION. (a) Subject to Section 1551.351, on application to the board of trustees and arrangement for payment of contributions, an individual participating in the group benefits program on August 31, 2003, as a current or former member of a governing body with administrative responsibility over a state agency created under a statute of this state that has statewide jurisdiction and whose employees are covered by this chapter or as a current or former member of [~~the State Board of Education or~~] the governing body of an institution of higher education remains eligible for participation in a health benefit plan offered under this chapter if a lapse in coverage has not occurred.

(b) A participant described by Subsection (a) [~~this section~~] may not receive a state contribution for premiums. The governing body of an institution of higher education may pay from local funds part or all of the contributions the state would pay for similar coverage of other participants in the group benefits program.

(c) The participant's contribution for coverage under a health benefit plan may not be greater than the contribution for continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272).

(d) Subject to Section 1551.351, a current or former member of the State Board of Education is eligible to participate in and receive a state contribution for coverage in a health benefit plan offered under this chapter.

The amendment to the amendment was read and failed of adoption by the following vote: Yeas 13, Nays 15, Present-not voting 1.

Yeas: Armbrister, Carona, Deuell, Duncan, Estes, Fraser, Harris, Janek, Lindsay, Ogden, Staples, Wentworth, Williams.

Nays: Averitt, Barrientos, Brimer, Ellis, Gallegos, Hinojosa, Jackson, Lucio, Madla, Ratliff, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

Present-not voting: Nelson.

Absent-excused: Bivins, Shapiro.

Question recurring on the adoption of Floor Amendment No. 50, the amendment was withdrawn.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 51

Amend **CSHB 7** by adding the following appropriately numbered ARTICLE and renumbering subsequent ARTICLES accordingly:

ARTICLE ____. TEXASNEXTSTEP GRANT PROGRAM

SECTION ____.01. Chapter 56, Education Code, is amended by adding Subchapter R to read as follows:

SUBCHAPTER R. TEXASNEXTSTEP GRANT PROGRAM

Sec. 56.481. DEFINITIONS. In this subchapter:

(1) "Coordinating board" means the Texas Higher Education Coordinating Board.

(2) "Eligible institution" means:

(A) a public junior college;

(B) a public technical institute; or

(C) a public state college.

(3) "Institution of higher education," "public junior college," "public technical institute," and "public state college" have the meanings assigned by Section 61.003.

(4) "Textbook costs" means the costs of textbooks and similar educational materials required for course work at an eligible institution.

Sec. 56.482. PROGRAM NAME; PURPOSE. (a) The student financial assistance program authorized by this subchapter is known as the TexasNextStep grant program, and an individual grant awarded under this subchapter is known as a TexasNextStep grant.

(b) The purpose of this subchapter is to provide a grant of money to enable eligible students to attend two-year public institutions of higher education in this state.

Sec. 56.483. ADMINISTRATION OF PROGRAM. (a) The coordinating board shall administer the TexasNextStep grant program and shall adopt any rules necessary to implement the TexasNextStep grant program or this subchapter. The coordinating board shall consult with the student financial aid officers of eligible institutions in developing the rules.

(b) The coordinating board shall adopt rules to provide a TexasNextStep grant to an eligible student enrolled in an eligible institution in a manner consistent with the administration of federal student financial aid programs.

(c) The total amount of grants awarded under the TexasNextStep grant program may not exceed the amount available for the program from appropriations, gifts, grants, or other funds.

(d) In determining who should receive a TexasNextStep grant, the coordinating board and the eligible institutions shall give highest priority to awarding TexasNextStep grants to students who demonstrate the greatest financial need.

Sec. 56.484. INITIAL ELIGIBILITY FOR GRANT. (a) To be eligible initially for a grant under the TexasNextStep grant program, a person must:

(1) be a resident of this state as determined by coordinating board rules;

(2) meet financial need requirements as defined by the coordinating board;

(3) not later than the 16th month after the month in which the person graduated from high school, enroll or have enrolled as an entering student for at least one-half of a full course load for an entering student, as determined by the coordinating board, in an associate degree or certificate program at an eligible institution;

(4) have graduated from:

(A) a public high school in this state; or

(B) an accredited private high school or a home school or other nontraditional educational program in this state;

(5) have applied for any available financial aid or assistance;

(6) meet eligibility requirements necessary to receive federal student financial aid, other than requirements regarding financial need; and

(7) comply with any additional nonacademic requirement adopted by the coordinating board under this subchapter.

(b) A person is not eligible to receive a TexasNextStep grant if the person:

(1) has been granted an associate or baccalaureate degree; or

(2) is concurrently enrolled in an institution of higher education other than an eligible institution, unless the person is enrolled in the person's final semester or term at the eligible institution before completing the person's associate degree or certificate program and the person enrolls in one or more courses that, if successfully completed, would allow the person to complete the degree or certificate requirements.

(c) A person may not receive a TexasNextStep grant for more than 90 semester credit hours or the equivalent, including any developmental course work required by an eligible institution.

(d) Subject to Section 56.487(b)(2), a person may receive a TexasNextStep grant regardless of whether the person is eligible for a TEXAS grant or a TEXAS grant II.

(e) A person may not receive a TexasNextStep grant for a semester or term that begins on or after the third anniversary of the initial award of a TexasNextStep grant to the person.

Sec. 56.485. CONTINUING ELIGIBILITY AND ACADEMIC PERFORMANCE REQUIREMENTS. (a) After initially qualifying for a TexasNextStep grant, a person may continue to receive a TexasNextStep grant during each semester or term in which the person is enrolled at an eligible institution only if the person:

(1) meets financial need requirements as defined by the coordinating board;

(2) is enrolled in an associate degree or certificate program at an eligible institution;

(3) except as provided by Subsection (b), is enrolled for at least one-half of a full course load for a student in an associate degree or certificate program, as determined by the coordinating board;

(4) makes satisfactory academic progress toward an associate degree or certificate;

(5) meets eligibility requirements necessary to receive federal student financial aid, other than requirements regarding financial need; and

(6) complies with any additional nonacademic requirement adopted by the coordinating board.

(b) A person is exempt from the one-half course load requirement of Subsection (a)(3) if the TexasNextStep grant is awarded for the person's final semester or term before the person completes the person's degree or certificate program and the person enrolls in one or more courses that, if successfully completed, would allow the person to complete the degree or certificate requirements. A person who qualifies for an exemption under this subsection is not eligible for a TexasNextStep grant in a subsequent semester or term, regardless of whether the person graduates as planned.

(c) If a person fails to meet any of the requirements of Subsection (a) after the completion of any semester or term, the person may not receive a TexasNextStep grant during the next semester or term in which the person enrolls. A person may become eligible to receive a TexasNextStep grant in a subsequent semester or term if the person:

(1) completes a semester or term during which the person is not eligible for the grant; and

(2) meets all the requirements of Subsection (a).

(d) For purposes of this section, a person makes satisfactory academic progress toward an associate degree or certificate only if the person meets the standards for academic progress as determined by the eligible institution.

(e) A person's eligibility to receive a TexasNextStep grant is not affected by the person's enrollment in or transfer to another eligible institution.

Sec. 56.486. GRANT USE. A person receiving a TexasNextStep grant may use the money to pay any usual and customary cost of attendance at an eligible institution incurred by the person. The institution may disburse all or part of the proceeds of a TexasNextStep grant to an eligible person only if the tuition and required fees and textbook costs incurred by the person at the institution have been paid.

Sec. 56.487. GRANT AMOUNT. (a) The amount of a TexasNextStep grant for a student enrolled full-time at an eligible institution is the amount determined by the coordinating board as the average amount of tuition and required fees and textbook costs that a resident student enrolled full-time in an associate degree or certificate program would be charged for that semester or term at the institution, except that if the eligible institution is a public junior college, the average amount of those charges shall be computed without including the portion of tuition and required fees charged only to a student who resides outside the junior college district.

(b) The coordinating board shall adopt rules that:

(1) allow the coordinating board to increase or decrease, in proportion to the number of semester credit hours in which a student is enrolled, the amount of a TexasNextStep grant award under this section to a student who is enrolled in a number of semester credit hours in excess of or below the number of semester credit hours described in Section 56.484(a)(3) or 56.485(a)(3); and

(2) require the coordinating board to reduce the amount of a TexasNextStep grant by the amount of any state or federal gift aid for which the person receiving the grant is eligible if that aid could be applied, according to the terms of the aid, toward the person's tuition and required fees and textbook costs at the eligible institution.

(c) Not later than January 31 of each year, the coordinating board shall publish the amounts of each grant established by the board with respect to an eligible institution for the academic year beginning the next fall semester.

(d) An eligible institution may not:

(1) charge a person attending the institution who also receives a TexasNextStep grant an amount of tuition and required fees in excess of the amount of the TexasNextStep grant received by the person for tuition and required fees, except that if the eligible institution is a public junior college, the institution may charge an additional amount to the person based on the person's residence outside the junior college district; or

(2) deny admission to or enrollment in the institution based on a person's eligibility to receive a TexasNextStep grant or a person's receipt of a TexasNextStep grant.

Sec. 56.488. BIENNIAL REPORT. The coordinating board shall track the academic performance and subsequent educational attainment of grant recipients, by institution, and report this information biennially to the legislature and the comptroller.

Sec. 56.489. APPROPRIATIONS. This subchapter may not be implemented and grants may not be awarded under this subchapter in any state fiscal year unless the legislature appropriates money to fully fund the TEXAS grant program under Subchapter M for that same fiscal year.

SECTION ____.02. (a) The change in law made by this article in adding Subchapter R, Chapter 56, Education Code, applies beginning with the 2004-2005 academic year, except that the Texas Higher Education Coordinating Board may not award a TexasNextStep grant under that subchapter to an entering student who enrolls in an eligible institution before the 2005-2006 academic year.

(b) The Texas Higher Education Coordinating Board shall adopt rules for the administration of Subchapter R, Chapter 56, Education Code, as added by this article, as soon as practicable after this article takes effect. For that purpose, the coordinating board may adopt the initial rules in the manner provided by law for emergency rules.

The floor amendment was read.

POINT OF ORDER

Senator Ogden raised a point of order that Floor Amendment No. 51 was not germane to the body of the bill.

On motion of Senator Ogden, the point of order was withdrawn.

On motion of Senator Lucio, the amendment was withdrawn.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 52

Amend **CSHB 7** by adding an appropriately numbered new SECTION to the bill and renumbering subsequent SECTIONS accordingly, to read as follows:

SECTION ____. Section 54.0513, Education Code, is amended to read as follows:

(a) Except as otherwise provided in this section, ~~I~~in addition to amounts that a governing board of an institution of higher education is authorized to charge as tuition under the other provisions of this chapter, the governing board, under the terms the

governing board considers appropriate, may charge any student an amount designated as tuition that the governing board considers necessary for the effective operation of the institution.

(b) A governing board may set a different tuition rate for each program and course level offered by each institution of higher education. A governing board may set a different tuition rate as the governing board considers appropriate to increase graduation rates, encourage efficient use of facilities, or enhance employee performance.

(c) The maximum amount of tuition that may be charged under this section to a resident or nonresident student is the average amount of tuition charged to a full-time student of comparable residency status enrolled for a comparable semester or term of the preceding academic year at the peer institutions listed in Subsection (d), adjusted to reflect any change in the consumer price index for all urban consumers, for all items and all regions of the United States, as published by the United States Department of Labor, Bureau of Labor Statistics, or a successor national index of the change in consumer prices, for the most recent year for which the index is available. The maximum amount of tuition is determined by weighting the tuition charged by each peer institution equally, without weighting by student enrollment.

(d) The peer institutions to be used in computing the maximum amount of tuition under this section are:

(1) the University of California at Berkeley;
(2) the University of California at Los Angeles;
(3) the University of Illinois at Urbana-Champaign;
(4) Indiana University at Bloomington;
(5) the University of Michigan – Ann Arbor;
(6) Michigan State University;
(7) the University of Minnesota;
(8) the University of North Carolina at Chapel Hill;
(9) Ohio State University, Main Campus;
(10) the University of Washington; and
(11) the University of Wisconsin – Madison.

(e) The coordinating board shall determine the maximum amount of tuition that may be charged to a resident or nonresident student under this section for each semester or term and report those amounts to the governing board of each institution of higher education to which this section applies as early as practicable before the semester or term begins. The coordinating board may require the governing board of an institution to which this section applies to obtain for the coordinating board any information the coordinating board requires to administer this section.

~~(e)~~ (f) Amounts collected by an institution of higher education under this section are institutional funds as defined by Section 51.009 of this code and shall be accounted for as designated funds. These funds shall not be accounted for in a general appropriations act in such a way as to reduce the general revenue appropriation to a particular institution.

~~(d)~~ (g) A governing board may waive all or part of the tuition charged to a student under this section if it finds that the payment of such tuition would cause an undue economic hardship on the student.

~~(e)~~ (h) Section 56.033 of this code requiring certain percentage amounts of tuition to be set aside for grants and scholarships does not apply to tuition collected under this section.

~~(f)~~ (i) A governing board of an institution of higher education may continue to charge as tuition under this section the amount that it charged as the building use fee at that institution in the 1996-1997 academic year without holding a public hearing, but may not increase tuition under this section above that amount without holding a public hearing.

The floor amendment was read.

Senator Barrientos offered the following amendment to the amendment:

Floor Amendment No. 52A

Amend Floor Amendment No. 52 to **CSHB 7**, by striking proposed subsections (c), (d) and (e), substituting the following, and relettering subsequent subsections accordingly:

(c) Tuition charged under this section may not increase by more than 25 percent from one academic year to the next.

The amendment to the amendment was read.

On motion of Senator Barrientos, Floor Amendment No. 52A was withdrawn.

Question recurring on the adoption of Floor Amendment No. 52, the amendment was withdrawn.

Floor Amendment No. 53 was not offered.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 54

Amend **CSHB 7** by adding the following appropriately numbered ARTICLE to the bill and renumbering the remaining ARTICLES of the bill as appropriate:

ARTICLE __. IMMUNIZATIONS

SECTION __.01. Sections 38.001(c) and (f), Education Code, as amended by Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, are amended to read as follows:

(c) Immunization is not required for a person's admission to any elementary or secondary school if the person applying for admission:

(1) submits to the admitting official:

(A) an affidavit or a certificate signed by a physician who is duly registered and licensed to practice medicine in the United States, in which it is stated that, in the physician's opinion, the immunization required poses a significant risk to the health and well-being of the applicant or any member of the applicant's family or household; [~~or~~]

(B) an affidavit signed by the applicant or, if a minor, by the applicant's parent or guardian stating that the applicant declines immunization for reasons of conscience[~~, including a religious belief~~]; or

(C) an affidavit signed by the applicant or, if a minor, by the applicant's parent or guardian stating that the immunization conflicts with the tenets and practice of a recognized church or religious denomination of which the applicant is an adherent or member; or

(2) is a member of the armed forces of the United States and is on active duty.

(f) A person who has not received the immunizations required by this section for reasons of conscience or[~~, including~~] because of the person's religious beliefs[~~,~~] may be excluded from school in times of emergency or epidemic declared by the commissioner of public health.

SECTION __.02. Section 51.933(d), Education Code, as amended by Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(d) No form of immunization is required for a person's admission to an institution of higher education if the person applying for admission:

(1) submits to the admitting official:

(A) an affidavit or a certificate signed by a physician who is duly registered and licensed to practice medicine within the United States in which it is stated that, in the physician's opinion, the immunization required poses a significant risk to the health and well-being of the applicant or any member of the applicant's family or household; [~~or~~]

(B) an affidavit signed by the applicant or, if a minor, by the applicant's parent or guardian stating that the applicant declines immunization for reasons of conscience[~~, including a religious belief~~]; or

(C) an affidavit signed by the applicant or, if a minor, by the applicant's parent or guardian stating that the immunization conflicts with the tenets and practice of a recognized church or religious denomination of which the applicant is an adherent or member; or

(2) is a member of the armed forces of the United States and is on active duty.

SECTION __.03. Section 161.004(d), Health and Safety Code, as amended by Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(d) A child is exempt from an immunization required by this section if:

(1) a parent, managing conservator, or guardian states that the immunization is being declined for reasons of conscience[~~, including a religious belief~~]; [~~or~~]

(2) the immunization is medically contraindicated based on the opinion of a physician licensed by any state in the United States who has examined the child; or

(3) the immunization conflicts with the tenets of an organized religion to which a parent, managing conservator, or guardian belongs.

SECTION __.04. Section 161.0041(a), Health and Safety Code, as added by Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(a) A person claiming an exemption from a required immunization based on reasons of conscience[~~, including a religious belief,~~] under Section 161.004 of this code, Section 38.001 or 51.933, Education Code, or Section 42.043, Human Resources Code, must complete an affidavit on a form provided by the department stating the reason for the exemption.

SECTION __.05. Section 42.043(d), Human Resources Code, as amended by Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(d) No immunization may be required for admission to a facility regulated under this chapter if a person applying for a child's admission submits one of the following affidavits:

(1) an affidavit signed by a licensed physician stating that the immunization poses a significant risk to the health and well-being of the child or a member of the child's family or household; [~~or~~]

(2) an affidavit signed by the child's parent or guardian stating that the applicant declines immunization for reasons of conscience; or

(3) an affidavit signed by the child's parent or guardian stating that the immunization conflicts with the tenets and practice of a recognized religious organization of which the applicant is an adherent or a member[~~, including a religious belief~~].

The floor amendment was read.

POINT OF ORDER

Senator Ogden raised a point of order that Floor Amendment No. 54 was not germane to the body of the bill.

POINT OF ORDER RULING

The President ruled that the point of order was well-taken and sustained.

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 55

Amend **CSHB 7** by adding the following SECTION and renumbering the other SECTIONS accordingly:

SECTION ____. Subchapter B, Chapter 301, Government Code, is amended by adding Section 301.035 to read as follows:

Sec. 301.035. RECORD VOTES REQUIRED. Each vote taken by a house of the legislature or by a committee of either house on final adoption or approval of a bill or resolution, other than a congratulatory, memorial, or similar resolution, or on an amendment to such a bill or resolution or a motion to table an amendment to such a bill or resolution, must be a record vote, and the record of how each member of the house or committee voted shall be recorded in the journal of the house or the minutes of the committee, as appropriate.

The floor amendment was read.

POINT OF ORDER

Senator Ogden raised a point of order that Floor Amendment No. 55 was not germane to the body of the bill.

POINT OF ORDER RULING

The President ruled that the point of order was well-taken and sustained.

Senator Lindsay offered the following amendment to the bill:

Floor Amendment No. 56

Amend **CSHB 7** by inserting the following new article, appropriately numbered, and renumbering the subsequent articles accordingly:

ARTICLE ____. CONDEMNATION PROCEEDINGS IN CERTAIN COUNTIES

SECTION ____. Subchapter A, Chapter 25, Government Code, is amended by adding Section 25.0020 to read as follows:

Sec. 25.0020. CONDEMNATION PROCEEDINGS IN CERTAIN COUNTIES. (a) This section applies only to a county with a population of three million or more.

(b) Notwithstanding Section 25.1032 or any other law, a county civil court at law has jurisdiction over eminent domain proceedings, both statutory and inverse, in which the amount in controversy does not exceed $200,000.

(c) Notwithstanding Section 25.1032 or any other law, a district court has jurisdiction over eminent domain proceedings, both statutory and inverse, in which the amount in controversy exceeds $200,000.

(d) Notwithstanding Section 21.013, Property Code, a party initiating a condemnation proceeding shall file a petition with a court that has jurisdiction to hear the proceeding under Subsections (b) and (c).

(e) A condemnation proceeding shall be assigned randomly to a court with jurisdiction to hear the proceeding.

(f) For purposes of this section, "the amount in controversy" is:

(1) the amount of the last offer made by the condemning authority to the owner of the property before filing a petition under Section 21.012, Property Code; or

(2) the amount of damages claimed by a party filing an inverse condemnation case.

The floor amendment was read.

Senator Lindsay offered the following amendment to the amendment:

Floor Amendment No. 56A

Amend Floor Amendment No. 56 by Lindsay to **CSHB 7** by striking lines 4 through 9 and substituting the following:

ARTICLE ____. REORGANIZATION OF GOVERNMENTAL ENTITIES WITH JURISDICTION OVER CONDEMNATION PROCEEDINGS IN CERTAIN COUNTIES

Section ____. Subchapter A, Chapter 25, Government Code, is amended by adding Section 25.0020 to read as follows:

Sec. 25.0020. REORGANIZATION OF GOVERNMENTAL ENTITIES WITH JURISDICTION OVER CONDEMNATION PROCEEDINGS IN CERTAIN COUNTIES. (a) This section applies only to a county with a population of three million or more.

The amendment to the amendment was read.

POINT OF ORDER

Senator Gallegos raised a point of order that Floor Amendment No. 56A was not germane to the body of the bill.

POINT OF ORDER RULING

The President ruled that the point of order was well-taken and sustained.

Question recurring on the adoption of Floor Amendment No. 56, the amendment was withdrawn.

Senator Hinojosa offered the following amendment to the bill:

Floor Amendment No. 57

Amend **CSHB 7** by inserting the following new article, appropriately numbered, and renumbering the subsequent articles accordingly:

ARTICLE ____. DISTRICT JUDGES' SALARIES

SECTION ____. Sections 659.012(a) and (e), Government Code, are amended to read as follows:

(a) Notwithstanding Section 659.011:

(1) a justice of the supreme court is entitled to an annual salary from the state that is at least $102,463;

(2) a justice of a court of appeals other than the chief justice is entitled to an annual salary from the state that is five percent less than the salary provided by the General Appropriations Act for a justice of the supreme court, except that the combined salary of a justice of the court of appeals other than the chief justice from all state and county sources may not exceed the amount that is $1,000 less than the salary provided for a justice of the supreme court;

(3) the chief justice of a court of appeals is entitled to an annual salary from the state that is $2,500 more than the salary provided for the other justices of the court of appeals, except that the combined salary of the chief justice of a court of appeals may not exceed the amount that is $500 less than the salary provided for a justice of the supreme court; and

(4) a judge of a district court is entitled to an annual salary from the state that is 10 percent less than the salary provided in the General Appropriations Act for a justice of the supreme court[~~, except that unless otherwise provided by law, the combined salary of a district judge from state and county sources may not exceed the amount that is $2,000 less than the salary provided for a justice of the supreme court~~].

(e) For the purpose of salary payments by the state, the comptroller shall determine from sworn statements filed by the justices of the courts of appeals [~~and district judges~~] that the required salary differentials provided by this section are

maintained. If a salary combined with a county supplement would be in excess of the differential provided by this section, the comptroller shall reduce the state salary by the amount of the excess.

SECTION ____. Section 659.012(b), Government Code, is repealed.

SECTION ____. This article takes effect January 15, 2004.

The floor amendment was read.

On motion of Senator Hinojosa, Floor Amendment No. 57 was withdrawn.

Floor Amendment No. 58 was not offered.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 59

Amend **CSHB 7** by adding the following appropriately numbered Article and renumbering the remaining articles as appropriate:

ARTICLE ___. TEXAS CONGRESSIONAL REDISTRICTING COMMISSION

SECTION ___.01. Subtitle A, Title 3, Government Code, is amended by adding Chapter 307 to read as follows:

CHAPTER 307. TEXAS CONGRESSIONAL REDISTRICTING COMMISSION

Sec. 307.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Congressional Redistricting Commission.

(2) "Plan" means a redistricting plan for the Texas congressional districts adopted as provided by this chapter.

Sec. 307.002. TEXAS CONGRESSIONAL REDISTRICTING COMMISSION. The Texas Congressional Redistricting Commission exercises the legislative authority of this state to adopt redistricting plans for the election of the members of the United States House of Representatives elected from this state. Districts for that legislative body may not be established while the commission has authority to act under this chapter.

Sec. 307.003. MEMBERSHIP; TERMS. (a) The commission consists of nine members selected as follows:

(1) two members appointed by a majority vote of the members of the Texas House of Representatives belonging to the political party with the most members in the house of representatives;

(2) two members appointed by a majority vote of the members of the Texas House of Representatives belonging to the political party with the second highest number of members in the house of representatives;

(3) two members appointed by a majority vote of the members of the Texas Senate belonging to the political party with the most members in the senate;

(4) two members appointed by a majority vote of the members of the Texas Senate belonging to the political party with the second highest number of members in the senate; and

(5) one member appointed by an affirmative vote of not fewer than five of the members of the commission selected under Subdivisions (1) through (4).

(b) The member appointed under Subsection (a)(5) is a nonvoting member and serves as presiding officer of the commission.

(c) Each member of the commission must be a resident of this state. A person is not eligible to serve on the commission if the person:

(1) holds an elective public office;

(2) holds an office in a political party other than membership on a precinct committee;

(3) has served in a position described by Subdivision (1) or (2) within the two years preceding the date the person is appointed to the commission;

(4) is required to register under Section 305.003 or was required to register under that section in the two years preceding the date the person is appointed to the commission; or

(5) is currently receiving or has received in the two years preceding the date the person is appointed to the commission compensation that is required to be reported as a campaign or officeholder expenditure under Title 15, Election Code.

(d) The full term of a member of the commission is a two-year term that begins on February 1 of the year ending in one in which the initial appointment to the position is required to be made. At the conclusion of a member's two-year term, the authority of the commission to act under this chapter expires until the appointment of new members in the subsequent year ending in one.

(e) A vacancy on the commission is filled in the same manner as provided by this section for the original appointment, except that, if the commission is convened when the vacancy occurs or if the vacancy exists when the commission reconvenes, the supreme court shall fill the vacancy if the initial appointing authority fails to fill the vacancy on or before the 20th day after the date the vacancy occurs or the commission reconvenes, as applicable. The supreme court shall fill the vacancy not later than the ninth day after the earliest date on which the supreme court may fill the vacancy, or as soon after the ninth day as possible. The members of the Texas House of Representatives or Texas Senate authorized to appoint a member of the commission may meet as necessary to make an appointment or to fill a vacancy.

(f) The members of the commission appointed under Subsections (a)(1) through (4) shall be appointed not earlier than January 25 or later than January 31 of each year ending in one. The member appointed under Subsection (a)(5) shall be appointed not later than the 30th day after the commission convenes under Section 307.008(b). If a member is not appointed in the time provided by this subsection, the supreme court shall make the appointment before the sixth day after the last date on which the initial appointing authority could have made the appointment, or as soon after the sixth day as possible.

(g) A person may not, for the two-year period following the conclusion of the person's service on the commission:

(1) perform an activity for which registration is required under Chapter 305; or

(2) receive compensation that is required to be reported as a campaign or officeholder expenditure under Title 15, Election Code.

Sec. 307.004. OATH. Before serving on the commission, each person appointed shall take and subscribe to the constitutional oath of office.

Sec. 307.005. POLITICAL ACTIVITIES PROHIBITED. A member of the commission may not:

(1) campaign for elective office while a member of the commission; or

(2) actively participate in or contribute to the political campaign of a candidate for a state or federal elective office while a member of the commission.

Sec. 307.006. OPERATION OF COMMISSION. (a) The legislature shall appropriate sufficient money for the compensation and payment of the expenses of the commission members and any staff employed by the commission.

(b) The commission shall be provided access to statistical or other information compiled by the state or its political subdivisions as necessary for the commission's reapportionment duties.

(c) The Texas Legislative Council, under the direction of the commission, shall provide the technical staff and clerical services that the commission needs to prepare its plans.

Sec. 307.007. DUTIES. The commission shall:

(1) adopt rules to administer this chapter; and

(2) comply with Chapters 551 and 552.

Sec. 307.008. ADOPTION OF PLAN. (a) A redistricting plan or modification of a redistricting plan is adopted by a vote of not fewer than five members of the commission.

(b) The commission shall convene on the first business day after January 31 of each year ending in one and shall adopt a redistricting plan for the members of the United States House of Representatives elected from this state not later than July 1 of that year, unless the federal decennial census is delivered to the appropriate officials of this state after May 1 of that year, in which event the commission shall adopt the redistricting plan not later than the 90th day after the date the census is delivered.

(c) If the commission does not adopt a plan within the time required by Subsection (b), the commission's authority to adopt a plan is suspended and the supreme court shall adopt the plan not later than September 1 of the year in which the census is delivered, or the 60th day after the last date by which the commission is directed to adopt a plan under Subsection (b), whichever date is later.

Sec. 307.009. MODIFICATION OF PLAN; ADDITIONAL ACTION. (a) The commission may reconvene on the motion of at least four of its voting members filed with the secretary of state at any time after the adoption of the initial congressional redistricting plan to modify that plan if the plan becomes unenforceable by order of a court or by action of any other appropriate authority or is subject to legal challenge in a court proceeding. In modifying a redistricting plan, the commission must comply with all applicable standards imposed by this chapter, but is not limited to modifications necessary to correct legal deficiencies.

(b) The commission may reconvene in the manner provided by Subsection (a) to adopt a redistricting plan if the supreme court does not adopt a plan for the applicable body in the time provided by Section 307.008(c), if the supreme court is required to adopt a plan for that body because the commission did not adopt an initial plan for that body as required by Section 307.008(b).

Sec. 307.010. PLAN REQUIREMENTS. (a) In a redistricting plan or modification of a plan adopted under this chapter:

(1) each district must be composed of contiguous territory;

(2) each district must contain a population, excluding nonresident military personnel, as nearly equal as practicable to the population of any other district in the plan; and

(3) to the extent reasonable, each district must be compact and convenient and be separated from adjoining districts by natural geographic barriers, artificial barriers, or political subdivision boundaries.

(b) The commission or supreme court may not draw a redistricting plan purposely to favor or discriminate against a political party or any other group.

(c) For each plan or modification of a plan adopted by the commission, the commission shall prepare and publish a report that includes:

(1) for each district in the plan, the total population and the percentage deviation from the average district population;

(2) an explanation of the criteria used in developing the plan, with a justification of any population deviation in a district from the average district population;

(3) a map or maps of all the districts; and

(4) the estimated cost to be incurred by the counties for changes in county election precinct boundaries required to conform to the districts adopted by the commission.

(d) The commission shall make a copy of a report prepared under this section available to the public.

Sec. 307.011. SUBMISSION OF PLAN. On adoption of a plan or modification of a plan by the commission, the commission shall submit the plan or modification to the governor, the secretary of state, and the presiding officer of each house of the legislature.

Sec. 307.012. CESSATION OF OPERATIONS. (a) Following the initial adoption of the plan that the commission is required to adopt, the commission shall take all necessary steps to conclude its business and suspend operations until the commission reconvenes as provided by Section 307.009 if it does reconvene. On expiration of the terms of the members of the commission, the commission shall suspend its operations until the appointment of new members in the subsequent year ending in one.

(b) The commission shall prepare a financial statement disclosing all expenditures made by the commission. The official record of the commission shall contain all relevant information developed by the commission in carrying out its duties, including maps, data, minutes of meetings, written communications, and other information.

(c) After the commission suspends operations, the secretary of state becomes the custodian of its official records for purposes of election administration. Any unexpended money from an appropriation to the commission reverts to the general revenue fund.

Sec. 307.013. CHALLENGES TO PLAN. (a) After a plan or modification of a plan is adopted by the commission or supreme court, any person aggrieved by the plan or modification may file a petition with the supreme court challenging the plan.

(b) The supreme court has original jurisdiction to hear and decide cases involving congressional redistricting, including a case involving a redistricting plan adopted by the supreme court under this chapter. A member of the court is not disqualified from participating in a redistricting case because the member has participated or may participate in the adoption of a redistricting plan, but may recuse himself or herself from the case. This subsection supersedes any other law, including an applicable code of judicial conduct, with regard to conflicts of interest by or disqualification of a member of the court.

(c) The supreme court may consolidate any or all petitions and shall give the petitions precedence over all other matters.

(d) This section does not limit the remedies available under other law to any person aggrieved by a plan.

SECTION ___.02. This article takes effect January 1, 2005.

The floor amendment was read.

On motion of Senator Wentworth, Floor Amendment No. 59 was withdrawn.

Floor Amendment No. 59A was not offered.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 60

Amend **CSHB 7** by adding the following appropriately numbered section and renumbering existing sections accordingly:

SEC. ____. Subchapter A, Chapter 552, Government Code, is amended by adding Section 552.010 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 Building and Procurement Commission the information the commission 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 Building and Procurement Commission 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 commission shall share the information reported under this section with the open records steering committee.

The floor amendment was read.

Senator Barrientos offered the following amendment to the amendment:

Floor Amendment No. 60A

Amend Floor Amendment No. 60 to **CSHB 7** by adding an appropriately numbered new SECTION and renumbering subsequent SECTIONS accordingly, to read as follows:

SECTION ____. Section 2165.2035, Government Code, as created by House Bill 3042 of the 78th Legislature, is reenacted to read as follows:

Sec. 2165.2035. LEASE OF SPACE IN STATE-OWNED PARKING LOTS AND GARAGES. (a) In this section, "lease" includes a management agreement.

(b) The commission shall develop private, commercial uses for state-owned parking lots and garages located in the city of Austin at locations in the area bordered by West Fourth Street, Lavaca Street, West Third Street, and Nueces Street that the commission determines are appropriate for commercial uses outside of regular business hours.

(c) The commission may contract with a private vendor to manage the commercial use of state-owned parking lots and garages.

(d) Money received from a lease under this program shall be deposited to the credit of the general revenue fund.

(e) On or before December 1 of each even-numbered year, the commission shall submit a report to the legislature and the Legislative Budget Board describing the effectiveness of the program under this section.

(f) The limitation on the amount of space allocated to private tenants prescribed by Section 2165.205(b) does not apply to the lease of a state-owned parking lot or garage under this section.

(g) Any lease of a state-owned parking lot or garage under this section must contain a provision that allows state employees who work hours other than regular working hours under Section 658.005 to retain their parking privileges in a state-owned parking lot or garage.

(h) Nonprofit, charitable, and other community organizations may apply to use state parking lots and garages located in the city of Austin in the area bordered by West Fourth Street, Lavaca Street, West Third Street, and Nueces Street free of charge or at a reduced rate. The executive director of the commission shall develop a form to be used to make such applications. The form shall require information related to:

(1) the dates and times of the free use requested;

(2) the nature of the applicant's activities associated with the proposed use of state parking lots and garages; and

(3) any other information determined by the executive director of the commission to be necessary to evaluate an application.

(i) To be considered timely, an application must be submitted at least one month before the proposed use, unless this provision is waived by the executive director of the commission.

(j) The executive director of the commission may approve or reject an application made under Subsection (h).

The amendment to the amendment was read and was adopted without objection.

Question recurring on the adoption of Floor Amendment No. 60 as amended, the amendment as amended was adopted without objection.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 61

Amend **CSHB 7** in ARTICLE 10 by adding the following SECTION and renumbering the other SECTIONS accordingly:

SECTION 10.___. Chapter 301, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. COMPELLING ATTENDANCE OF ABSENT LEGISLATOR

Sec. 301.071. AUTHORITY OF PEACE OFFICERS. (a) In this section, "peace officer" means an individual who is elected, appointed, or employed to serve as a peace officer for a governmental entity and who is identified as a peace officer in Article 2.12, Code of Criminal Procedure, or other law.

(b) A peace officer may arrest a member of either house of the legislature and bring the member under the peace officer's custody to the hall of that house in the Capitol building in Austin at the direction of the presiding officer, sergeant-at-arms, or other authorized officer of that house, if the arrest is authorized by a warrant or other process issued by the applicable house in accordance with Section 10, Article III, Texas Constitution, or the rules of the applicable house.

(c) At the request of the presiding officer of either house of the legislature, the Department of Public Safety of the State of Texas shall make peace officers employed by the department available to carry out the authority provided by this section on behalf of that house.

(d) The authority provided by this section is in addition to the other powers and duties of a peace officer provided by law.

(e) In carrying out the authority provided by this section, a peace officer:

(1) is considered to be exercising discretionary duties within the scope of the peace officer's authority for which the peace officer has the official immunity provided by law while exercising a discretionary duty; and

(2) has the immunity that an officer of the house of the legislature would have in carrying out the same authority, in addition to the immunity provided by law to a peace officer in the exercise of discretionary duties of a peace officer.

The floor amendment was read.

On motion of Senator Wentworth, Floor Amendment No. 61 was withdrawn.

Floor Amendment No. 62 was not offered.

Floor Amendment No. 63 was not offered.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 64

Amend **CSHB 7** as follows:

(1) Add the following SECTION to the bill and renumber subsequent SECTIONS accordingly:

SECTION ____. Section 489.213(f), Government Code, as added by S.B. 275 of the 78th Regular Session, is repealed.

The floor amendment was read.

Senator Barrientos offered the following amendment to the amendment:

Floor Amendment No. 64A

Amend Floor Amendment No. 64 to **CSHB 7** by adding an additional SECTION as follows:

SECTION ____. Section 489.213, Government Code, as added by S.B. 275 of the 78th Regular Session is amended by amending Subsections (b) and (e) and adding Subsection (h) to read as follows:

(b) In determining eligible products and [~~small~~] businesses, the bank shall give special preference to products or businesses in the areas of semiconductors, nanotechnology, biotechnology, and biomedicine that have the greatest likelihood of commercial success, job creation, and job retention in this state. The bank shall give further preference to providing financing to projects or businesses that are:

(1) grantees under the small business innovation research program established under 15 U.S.C. Section 638, as amended;

(2) companies formed in this state to commercialize research funded at least in part with state funds;

(3) applicants that have acquired other sources of financing;

(4) companies formed in this state and receiving assistance from designated state small business development centers; or

(5) applicants who are residents of this state doing business in this state and performing financed activities predominantly in this state.

(e) The board may appoint an advisory committee of experts in the areas of semiconductors, nanotechnology, biotechnology, and biomedicine to review projects and businesses seeking financing from the bank.

(h) Any business in this state may be eligible for funding through the small business incubator fund if it is determined to have a substantial likelihood of developing and expanding the opportunities for small businesses in the semiconductor, nanotech, biotech, or biomedicine industries in Texas.

The amendment to the amendment was read.

POINT OF ORDER

Senator Ogden raised a point of order that Floor Amendment No. 64A was not germane to the body of the bill.

POINT OF ORDER RULING

The President ruled that the point of order was well-taken and sustained.

Question recurring on the adoption of Floor Amendment No. 64, the amendment was withdrawn.

(Senator Nelson in Chair)

Senator Estes again offered the following amendment to the bill:

Floor Amendment No. 15

Amend **CSHB 7** in ARTICLE 9 of the bill by adding the following appropriately numbered section and renumbering the subsequent sections of the bill accordingly:

SECTION 9.____. Rules adopted by the Texas Commission on Environmental Quality under Section 26.040, Water Code, before the effective date of this Act are validated as of the dates they were adopted and remain valid until they are modified or repealed by the commission.

The floor amendment was again read.

Senator Duncan offered the following amendment to the amendment:

Floor Amendment No. 15A

Amend Floor Amendment No. 15 to **CSHB 7** by striking the text of the amendment and substituting the following appropriately number section and renumbering the subsequent sections of the bill accordingly:

Section 9.__ The adoption of Rules by the Texas Commission on Environmental Quality under Section 26.040, Water Code, before the effective date of this Act is authorized and such rules shall remain in effect until they are modified or repealed by the commission.

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

Question recurring on the adoption of Floor Amendment No. 15 as amended, the amendment as amended was adopted by a viva voce vote.

Senator Shapleigh again offered the following amendment to the bill:

Floor Amendment No. 17

Amend **CSHB 7** by striking Section 9.01 of the bill and substituting:

SECTION 9.01. (a) It is the policy of this state to be effective and efficient with public funds, to provide for effective and efficient management of natural resources, to provide for effective and consistent enforcement of state and federal laws, to protect the health and safety of the people of this state, to promote fair economic development, and to serve the people of this state by making the government more visible, accessible, coherent, consistent, and accountable to the people of this state. The legislature finds that the Texas Commission on Environmental Quality's procedures for processing permits is cumbersome, confusing, lengthy, and inefficient for citizens, business, political subdivisions, and the commission and finds that the

commission's procedures for assessing and enforcing penalties for noncompliance with state and federal environmental laws may need to be updated and strengthened to deter noncompliance.

(b) The Texas Commission on Environmental Quality's permitting and enforcement processes warrant, and the legislature directs, an in-depth evaluation, including the identification of problems, potential options, and solutions. The evaluation must solicit and consider input from all stakeholders, and the evaluation process must include public hearings and the opportunity for submission of written and oral comments. At least two of the public hearings must be held in affected communities outside the greater Austin area. The solutions identified in the final assessment of the commission's permitting and enforcement processes must ensure that:

(1) all relevant environmental protection standards are maintained at a level that at least equals the current level;

(2) the commission's permitting processes are streamlined;

(3) the commission's permitting processes are user-friendly to citizens and promote sound economic development;

(4) the commission's enforcement procedures and penalties for noncompliance reflect any potential economic benefit to the offender;

(5) the commission's enforcement procedures account for the full cost to human health of noncompliance;

(6) the division of responsibility between the commission and the office of the attorney general is efficient and effectively obtains the maximum degree of environmental compliance possible; and

(7) all stakeholder concerns are considered.

(c) The comptroller of public accounts shall conduct the evaluation and final assessment required by Subsection (b) of this section and shall submit the comptroller's findings not later than December 1, 2004, to the governor, the lieutenant governor, the speaker of the house of representatives, the Texas Commission on Environmental Quality, and the presiding officer of the standing committee of each house of the legislature that has primary jurisdiction over environmental issues.

(d) It is the intent of the legislature to effectuate the appropriate solutions through legislation at the earliest opportunity after receipt of the comptroller's final assessment.

The floor amendment was again read.

On motion of Senator Ogden, Floor Amendment No. 17 was tabled by the following vote: Yeas 19, Nays 10.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Nelson, Ogden, Ratliff, Staples, Wentworth, Whitmire, Williams.

Nays: Barrientos, Ellis, Gallegos, Hinojosa, Lucio, Madla, Shapleigh, Van de Putte, West, Zaffirini.

Absent-excused: Bivins, Shapiro.

Senator Gallegos offered the following amendment to the bill:

Floor Amendment No. 47

Amend **CSHB 7** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 521.142(a), Transportation Code, is amended to read as follows:

(a) An application for an original license must state the applicant's full name and place and date of birth. This information must be verified by presentation of proof of identity satisfactory to the department. The department shall accept as proof of the applicant's identity an identity document that is issued by the government of another country, if that document bears the applicant's photograph, full name, and date of birth and the government of the other country has established reasonable mechanisms by which the department can verify the identity document. For purposes of this section, an identity document includes a passport, a consular identity document, and a national identity document. On the reverse side of a driver's license, the department shall print the license holder's country of citizenship and indicate the country of citizenship by a uniform symbol or code on the face of the license in the space where the department indicates a restriction or endorsement.

The amendment was read.

Senator Gallegos offered the following amendment to the amendment:

Floor Amendment No. 47A

Amend Floor Amendment No. 47 to **CSHB 7** by striking the text of the amendment and substituting:

Amend **CSHB 7** as follows:

(1) In the introduction to SECTION 21.01 of the bill (committee printing page 23, line 34) strike "Subsection (e)" and substitute "Subsections (e) and (f)".

(2) At the end of SECTION 21.01 of the bill (committee printing page 23, between lines 50 and 51) insert:

(f) The Department of Public Safety may not spend appropriated money to implement the issuance of driver's licenses unless the department accepts as proof of the identity of an applicant for issuance of a driver's license an identity document that is issued by the government of another country, if that document bears the applicant's photograph, full name, and date of birth and the government of the other country has established reasonable mechanisms by which the department can verify the identity document. For purposes of this section, an identity document includes a passport, a consular identity document, and a national identity document. On the reverse side of a driver's license, the department shall print the license holder's country of citizenship and indicate the country of citizenship by a uniform symbol or code on the face of the license in the space where the department indicates a restriction or endorsement.

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

POINT OF ORDER

Senator Ogden raised a point of order that Floor Amendment No. 47A was not germane to the body of the bill.

On motion of Senator Ogden, the point of order was withdrawn.

On motion of Senator Gallegos, Floor Amendment No. 47 as amended was withdrawn.

VOTE RECONSIDERED ON FLOOR AMENDMENT NO. 5

On motion of Senator Ogden and by unanimous consent, the vote by which Floor Amendment No. 5 was adopted was reconsidered.

Question — Shall Floor Amendment No. 5 to **CSHB 7** be adopted?

Senator Duncan offered the following amendment to the amendment:

Floor Amendment No. 5A

Amend Floor Amendment No. 5 to **CSHB 7** by adding the following to Article 16.

SECTION ____ 01. In order to effectuate fuel savings for the state as provided by Chapter 447, Government Code, the Texas Department of Transportation is authorized to operate a pool for the custody, control, operation and maintenance of all aircraft owned or leased by the state.

SECTION ____.02. The heading to Subchapter A, Chapter 2205, Government Code, is amended to read as follows:

SUBCHAPTER A. STATE AIRCRAFT POOLING [~~BOARD~~]; GENERAL PROVISIONS

SECTION ____.03. Section 2205.002(1), Government Code, is amended to read as follows:

(1) "Department [~~Board~~]" means the Texas Department of Transportation [~~State Aircraft Pooling Board~~].

SECTION ____.04. Section 2205.032, Government Code, is amended to read as follows:

Sec. 2205.032. CUSTODY, CONTROL, OPERATION, AND MAINTENANCE. (a) The department [~~board~~] shall operate a pool for the custody, control, operation, and maintenance of all aircraft owned or leased by the state.

(b) The department [~~board~~] may purchase aircraft with funds appropriated for that purpose.

(c) As part of the strategic plan that the department [~~board~~] develops and submits under Chapter 2056, the department [~~board~~] shall develop a long-range plan for its pool of aircraft. The department [~~board~~] shall include appropriate portions of the long-range plan in its legislative appropriations request. The long-range plan must include estimates of future aircraft replacement needs and other fleet management needs, including any projected need to increase or decrease the number of aircraft in the pool. In developing the long-range plan, the department [~~board~~] shall consider at a minimum for each aircraft in the pool:

(1) how much the aircraft is used and the purposes for which it is used;

(2) the cost of operating the aircraft and the revenue generated by the aircraft; and

(3) the demand for the aircraft or for that type of aircraft.

SECTION ____.05. Section 2205.034, Government Code, is amended to read as follows:

Sec. 2205.034. FACILITIES. (a) The department [~~board~~] may acquire appropriate facilities for the accommodation of all aircraft owned or leased by the state. The facilities may be purchased or leased as determined by the department [~~board~~] to be most economical for the state and as provided by legislative appropriations. The facilities may include adequate hangar space, an indoor passenger waiting area, a flight-planning area, communications facilities, and other related and necessary facilities.

(b) A state agency that operates an aircraft may not use a facility in Austin other than a facility operated by the department [~~board~~] for the storage, parking, fueling, or maintenance of the aircraft, whether or not the aircraft is based in Austin. In a situation the department [~~board~~] determines to be an emergency, the department [~~board~~] may authorize a state agency to use a facility in Austin other than a department [~~board~~] facility for the storage, parking, fueling, or maintenance of an aircraft.

SECTION ____.06. Section 2205.035, Government Code, is amended to read as follows:

Sec. 2205.035. AIRCRAFT LEASES. (a) The department [~~board~~] by interagency contract may lease state-owned aircraft to a state agency.

(b) A state agency that is the prior owner or lessee of an aircraft has the first option to lease that aircraft from the department [~~board~~].

(c) The lease may provide for operation or maintenance by the department [~~board~~] or the state agency.

(d) A state agency may not expend appropriated funds for the lease of an aircraft unless the department [~~board~~] executes the lease or approves the lease by department [~~board~~] order.

(e) A state agency may not use money appropriated by the legislature to rent or lease aircraft except from the department [~~board~~] or as provided by Subsection (f). For purposes of this subsection and Subsection (f), payments of mileage reimbursements provided for by the General Appropriations Act are not rentals or leases of aircraft.

(f) If the department [~~board~~] determines that no state-owned aircraft is available to meet a transportation need that has arisen or that a rental or lease of aircraft would reduce the state's transportation costs, the department [~~board~~] shall authorize a state agency to expend funds for the rental or lease of aircraft, which may include a helicopter.

SECTION ____.07. Section 2205.036, Government Code, is amended to read as follows:

Sec. 2205.036. PASSENGER TRANSPORTATION. (a) The department [~~board~~] shall provide aircraft transportation, to the extent that its aircraft are available, to:

(1) state officers and employees who are traveling on official business according to the coordinated passenger scheduling system and the priority scheduling system developed as part of the aircraft operations manual under Section 2205.038;

(2) persons in the care or custody of state officers or employees described by Subdivision (1); and

(3) persons whose transportation furthers official state business.

(b) The department [~~board~~] may not provide aircraft transportation to a passenger if the passenger is to be transported to or from a place where the passenger:

(1) will make or has made a speech not related to official state business;

(2) will attend or has attended an event sponsored by a political party;

(3) will perform a service or has performed a service for which the passenger is to receive an honorarium, unless the passenger reimburses the department [~~board~~] for the cost of transportation;

(4) will attend or has attended an event at which money is raised for private or political purposes; or

(5) will attend or has attended an event at which an audience was charged an admission fee to see or hear the passenger.

(c) The department [~~board~~] may not provide aircraft transportation to a destination unless:

(1) the destination is not served by a commercial carrier;

(2) the time required to use a commercial carrier interferes with passenger obligations; or

(3) the number of passengers traveling makes the use of state aircraft cost-effective.

(d) The department shall monitor and ensure compliance with the requirements of this section.

SECTION ____.08. Section 2205.038, Government Code, is amended to read as follows:

Sec. 2205.038. AIRCRAFT OPERATIONS MANUAL. (a) The department [~~board~~] shall:

(1) prepare a manual that establishes minimum standards for the operation of aircraft by state agencies; and

(2) adopt procedures for the distribution of the manual to state agencies.

(b) The manual must include provisions for:

(1) pilot certification standards, including medical requirements for pilots;

(2) recurring training programs for pilots;

(3) general operating and flight rules;

(4) coordinated passenger scheduling; and

(5) other issues the department [~~board~~] determines are necessary to ensure the efficient and safe operation of aircraft by a state agency.

(c) The department [~~board~~] shall confer with and solicit the written advice of state agencies the department [~~board~~] determines are principal users of aircraft operated by the department [~~board~~] and, to the extent practicable, incorporate that advice in the development of the manual and subsequent changes to the manual.

(d) The department [~~board~~] shall give an officer normally elected by statewide election priority in the scheduling of aircraft. The department [~~board~~] by rule may require a 12-hour notice by the officer to obtain the priority in scheduling.

SECTION ____.09. Section 2205.039, Government Code, is amended to read as follows:

Sec. 2205.039. TRAVEL LOG. (a) The Legislative Budget Board, in cooperation with the department [~~board~~], shall prescribe:

(1) a travel log form for gathering information about the use of state-operated aircraft;

(2) procedures to ensure that individuals who travel as passengers on or operate state-operated aircraft provide in a legible manner the information requested of them by the form; and

(3) procedures for each state agency that operates an aircraft for sending the form to the department [~~board~~] and the Legislative Budget Board.

(b) The travel log form must request the following information about a state-operated aircraft each time the aircraft is flown:

(1) a mission statement, which may appear as a selection to be identified from general categories appearing on the form;

(2) the name, state agency represented, destination, and signature of each person who is a passenger or crew member of the aircraft;

(3) the date of each flight;

(4) a detailed and specific description of the official business purpose of each flight; and

(5) other information determined by the Legislative Budget Board and the department [~~board~~] to be necessary to monitor the proper use of the aircraft.

(c) A state agency other than the department [~~board~~] shall send travel logs to the department [~~board~~] each month in which the agency operates an aircraft.

(d) The department shall monitor and ensure compliance by state agencies with the requirements of this section.

(e) The department shall annually report to the Legislative Budget Board on air travel information received under this section.

SECTION ____.10. Section 2205.040, Government Code, is amended to read as follows:

Sec. 2205.040. RATES AND BILLING PROCEDURES. (a) The department [~~board~~] shall adopt rates for interagency aircraft services that are sufficient to recover[~~, in the aggregate and to the extent possible,~~] all expenses incurred under this chapter [~~direct costs for the services provided~~], including current obligations for capital equipment financed under the Texas Public Finance Authority's master lease purchase program and aircraft replacement costs [~~a state agency's pro rata share of major maintenance, overhauls of equipment and facilities, and pilots' salaries~~].

(b) The department shall deposit all revenue received under this chapter to the credit of the state highway fund. Money deposited to the credit of the state highway fund under this chapter is exempt from the application of Section 403.095 [~~Legislative Budget Board, in cooperation with the board and the state auditor, shall prescribe a billing procedure for passenger travel on state-operated aircraft~~].

(c) The department may spend money from the state highway fund for expenses incurred under this chapter.

(d) It is the intent of the legislature that receipts and expenditures that relate to the state highway fund under this chapter be balanced over time so that, to the extent practicable, the receipts and expenditures do not result in a net gain or net loss to the fund.

SECTION ____.11. Section 2205.041(a), Government Code, is amended to read as follows:

(a) The Legislative Budget Board, in cooperation with the department [~~board~~], shall prescribe:

(1) an annual aircraft use form for gathering information about the use of state-operated aircraft, including the extent to which and the methods by which the goal provided by Section 2205.031(b) is being met; and

(2) procedures for each state agency that operates an aircraft for sending the form to the department [~~board~~] and the Legislative Budget Board.

SECTION ____.12. Section 2205.042, Government Code, is amended to read as follows:

Sec. 2205.042. PILOTS. An individual who is not a pilot employed by the department [~~board~~] may not operate a state-operated aircraft unless the department [~~board~~] grants the individual a specific exemption from that requirement.

SECTION ____.13. Section 2205.043(b), Government Code, is amended to read as follows:

(b) The department [~~board~~] shall adopt rules, consistent with federal regulations and Subtitle A, Title 11 [~~Article 6139f, Revised Statutes~~], governing the color, size, and location of marks of identification required by this section.

SECTION ____.14. Section 2205.044, Government Code, is amended to read as follows:

Sec. 2205.044. FUEL AND MAINTENANCE CONTRACTS. The department [~~board~~] may contract with a state or federal governmental agency or a political subdivision to provide aircraft fuel or to provide aircraft maintenance services.

SECTION ____.15. Section 2205.045(a), Government Code, is amended to read as follows:

(a) The department [~~board~~] may purchase insurance to protect the department [~~board~~] from loss caused by damage, loss, theft, or destruction of aircraft owned or leased by the state and shall purchase liability insurance to protect the officers and employees of each state agency from loss arising from the operation of state-owned aircraft.

SECTION ____.16. Section 2205.046, Government Code, is amended to read as follows:

Sec. 2205.046. AIRCRAFT FOR FLIGHT TRAINING PROGRAMS. (a) The department [~~board~~] may transfer aircraft to a public technical institute or other public postsecondary educational institution for use in the institution's flight training program. Except as provided by this section, the department [~~board~~] has no responsibility for continued maintenance of aircraft transferred under this section.

(b) As a condition to the transfer of the aircraft, the institution must certify in writing to the department [~~board~~] that the institution will accept full responsibility for maintenance of the aircraft and that it will be properly maintained while in the custody and control of the institution. The department [~~board~~] is entitled to inspect the aircraft without notice for the purpose of insuring that the aircraft are properly maintained.

(c) The department [~~board~~] may immediately reassume custody and control of a transferred aircraft on a finding by the department [~~board~~] that:

(1) the aircraft is not being properly maintained;

(2) the aircraft is being used for a purpose other than flight training; or

(3) the institution has discontinued its flight training program.

SECTION ____.17. Section 2205.047, Government Code, is amended to read as follows:

Sec. 2205.047. INFORMATION POSTED ON THE INTERNET. The department [~~board~~] shall post information related to travel and other services provided by the department under this chapter [~~board~~] on an Internet site maintained by or for the department [~~board~~]. The site must be generally accessible to state agencies, persons who use the department's [~~board's~~] services, and, to the extent appropriate, the general public.

SECTION ____.18. Sections 2205.003-2205.019, Government Code, are repealed.

SECTION ____.19. On the effective date of this Act:

(1) the State Aircraft Pooling Board is abolished and all powers, duties, obligations, rights, contracts, leases, bonds, appropriations, records, employees, and real or personal property of the State Aircraft Pooling Board are transferred to the Texas Department of Transportation;

(2) a rule, manual, form, policy, procedure, approval, authorization, or decision of the State Aircraft Pooling Board continues in effect as a rule, manual, form, policy, procedure, approval, authorization, or decision of the Texas Department of Transportation until superseded by an act of the Texas Department of Transportation;

(3) a reference in law to the State Aircraft Pooling Board means the Texas Department of Transportation; and

(4) the number of full-time equivalent positions intended to be allocated to the State Aircraft Pooling Board by Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003 (the General Appropriations Act), is reduced by 39 for fiscal years 2004 and 2005, and the number of full-time equivalent positions allocated to the Texas Department of Transportation is increased by 39 for fiscal years 2004 and 2005 for the purpose of administering Chapter 2205, Government Code.

SECTION ____.20. (a) Notwithstanding any other law, the General Land Office shall sell to the Texas Department of Transportation for fair market value the approximately three-acre property formerly operated by the State Aircraft Pooling Board at the site of the former Robert Mueller Municipal Airport.

(b) The department may only:

(1) use the property described by Subsection (a) of this section for purposes consistent with the operation of an intelligent transportation system unless the City of Austin and Travis County agree to a different use; and

(2) lease an unneeded portion of the property described by Subsection (a) of this section under the procedures prescribed by Subchapter C, Chapter 202, Transportation Code, if the lease is approved by the City of Austin and Travis County.

(c) In this section, "intelligent transportation system" means a traffic management system designed to enhance the efficiency and safety of the transportation system in the Austin regional area through the remote monitoring and broadcasting of traffic information. The term does not include the maintenance of vehicles, the storage of fuel, or the storage of vehicles.

SECTION ____.21. Before March 1, 2004, the Texas Department of Transportation shall file with the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board a complete and detailed report on the transfer of powers and duties from the State Aircraft Pooling Board to the Texas Department of Transportation.

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

Question recurring on the adoption of Floor Amendment No. 5 as amended, the amendment as amended was again adopted by a viva voce vote.

VOTE RECONSIDERED ON FLOOR AMENDMENT NO. 12

On motion of Senator Barrientos and by unanimous consent, the vote by which Floor Amendment No. 12 was adopted was reconsidered.

Question — Shall Floor Amendment No. 12 to **CSHB 7** be adopted?

Senator Barrientos offered the following amendment to the amendment:

Floor Amendment No. 12A

Amend Floor Amendment No. 12 to **CSHB 7** as follows:

(1) Strike Section 31.046, Subsection (a) and substitute the following:

"(a) A person appointed as the commissioner must complete the training program established under this section no later than 90 days from the date he or she takes office."

(2) In Section 31.046, Subsection (b)(4), strike "related" and substitute "relate".

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

Question recurring on the adoption of Floor Amendment No. 12 as amended, the amendment as amended was again adopted by a viva voce vote.

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

CSHB 7 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Hinojosa, Shapleigh, Van de Putte, and Zaffirini asked to be recorded as voting "Nay" on the passage of **CSHB 7** to third reading.

(Senator Carona in Chair)

COMMITTEE SUBSTITUTE HOUSE BILL 1 ON THIRD READING

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1** be placed on its third reading and final passage:

CSHB 1, Relating to the dates of certain elections, the procedures for canvassing the ballots for an election, and the counting of certain ballots voted by mail.

The motion prevailed by the following vote: Yeas 26, Nays 3.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Ratliff, Shapleigh, Staples, Van de Putte, West, Whitmire, Williams.

Nays: Barrientos, Wentworth, Zaffirini.

Absent-excused: Bivins, Shapiro.

The bill was read third time.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1 on Third Reading

Amend **CSHB 1** on page 2, line 40 by striking the words "not earlier than the effective date of this Act and".

The floor amendment was read and was adopted without objection.

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

CSHB 1 as again amended was finally passed by the following vote: Yeas 18, Nays 11.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Nelson, Ogden, Ratliff, Staples, Wentworth, Williams.

Nays: Barrientos, Ellis, Gallegos, Hinojosa, Lucio, Madla, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

Absent-excused: Bivins, Shapiro.

COMMITTEE SUBSTITUTE
HOUSE BILL 7 ON THIRD READING

Senator Ogden moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 7** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 2.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Ratliff, Shapleigh, Staples, Van de Putte, West, Whitmire, Williams, Zaffirini.

Nays: Barrientos, Wentworth.

Absent-excused: Bivins, Shapiro.

The bill was read third time.

Question — Shall **CSHB 7** as amended be finally passed?

AT EASE

The Presiding Officer, Senator Carona in Chair, at 4:39 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

IN LEGISLATIVE SESSION

Senator Nelson at 4:55 p.m. called the Senate to order as In Legislative Session.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
September 25, 2003

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

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

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

SCR 3, In memory of A. W. Riter, Jr., of Tyler.

SCR 4, Commending Sisters of Mercy for their many contributions to the State of Texas.

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 3
House Conferees: King - Chair/Crabb/Grusendorf/Hamric/Wilson/

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

COMMITTEE SUBSTITUTE
HOUSE BILL 7 ON THIRD READING

The Presiding Officer laid before the Senate **CSHB 7** on its third reading. The bill had been read third time:

CSHB 7, Relating to the organization, board membership, and functions of certain governmental agencies and to the transfer of certain functions to other governmental agencies.

Question — Shall **CSHB 7** as amended be finally passed?

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1 on Third Reading

Amend 2nd Reading Floor Amendment No. 29 as amended to **CSHB 7** as follows:

In proposed Section 321.0138(c), Government Code, between "information" and "relating", insert "designated by the state auditor after consultation with the comptroller" (page 2, line 7).

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

Senator Janek offered the following amendment to the bill:

Floor Amendment No. 2 on Third Reading

Amend **CSHB 7** on third reading in ARTICLE 19 of the bill by adding the following section to that article, appropriately numbered, and renumbering subsequent sections of that article accordingly:

SECTION 19.____. (a) Section 11.23, Tax Code, is amended by adding Subsection (j-1) to read as follows:

(j-1) Medical Center Development in Populous Counties. In a county described by Section 201.1055(1), Transportation Code, all real and personal property owned by a nonprofit corporation, as defined in the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), and held for use in the development or operation of a medical center area or areas in which the nonprofit corporation has donated land for a state medical, dental, or nursing school, and for other hospital, medical, educational, or nonprofit uses and uses reasonably related thereto, or for governmental or public purposes, including the relief of traffic congestion, and not leased or otherwise used with a view to profit, is exempt from all ad valorem taxation as though the property were, during that time, owned and held by the state for health and educational purposes. In connection with the application or enforcement of a deed restriction or a covenant related to the property, a use or purpose described in this subsection shall also be considered to be a hospital, medical, or educational use, or a use that is reasonably related to a hospital, medical, or educational use.

(b) Section 11.43(c), Tax Code, as amended by Chapter 407, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(c) An exemption provided by Section 11.13, 11.17, 11.18, 11.182, 11.183, 11.19, 11.20, 11.21, 11.22, 11.23(h), [~~or~~] (j), or (j-1), 11.29, 11.30, or 11.31, once allowed, need not be claimed in subsequent years, and except as otherwise provided by Subsection (e), the exemption applies to the property until it changes ownership or the person's qualification for the exemption changes. However, the chief appraiser may require a person allowed one of the exemptions in a prior year to file a new application to confirm the person's current qualification for the exemption by delivering a written notice that a new application is required, accompanied by an appropriate application form, to the person previously allowed the exemption.

(c) This section takes effect on the 91st day after the last day of the legislative session and applies only to the ad valorem taxation of property for a tax year that begins on or after January 1, 2004.

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

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 3 on Third Reading

Amend **CSHB 7** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION ___. Section 392.304(a), Finance Code, as amended by Chapter 851, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(a) Except as otherwise provided by this section, in debt collection or obtaining information concerning a consumer, a debt collector may not use a fraudulent, deceptive, or misleading representation that employs the following practices:

(1) using a name other than the:

(A) true business or professional name or the true personal or legal name of the debt collector while engaged in debt collection; or

(B) name appearing on the face of the credit card while engaged in the collection of a credit card debt;

(2) failing to maintain a list of all business or professional names known to be used or formerly used by persons collecting consumer debts or attempting to collect consumer debts for the debt collector;

(3) representing falsely that the debt collector has information or something of value for the consumer in order to solicit or discover information about the consumer;

(4) failing to disclose clearly in any communication with the debtor the name of the person to whom the debt has been assigned or is owed when making a demand for money;

(5) in the case of a third-party debt collector, failing to disclose, except in a formal pleading made in connection with a legal action:

(A) that the communication [~~debt collector~~] is an attempt [~~attempting~~] to collect a debt and that any information obtained will be used for that purpose, if the communication is the initial written or oral communication between the third-party debt collector and [~~with~~] the debtor; or

(B) that the communication is from a debt collector, if the communication is a subsequent written or oral communication between the third-party debt collector and [~~with~~] the debtor;

(6) using a written communication that fails to indicate clearly the name of the debt collector and the debt collector's street address or post office box and telephone number if the written notice refers to a delinquent consumer debt;

(7) using a written communication that demands a response to a place other than the debt collector's or creditor's street address or post office box;

(8) misrepresenting the character, extent, or amount of a consumer debt, or misrepresenting the consumer debt's status in a judicial or governmental proceeding;

(9) representing falsely that a debt collector is vouched for, bonded by, or affiliated with, or is an instrumentality, agent, or official of, this state or an agency of federal, state, or local government;

(10) using, distributing, or selling a written communication that simulates or is represented falsely to be a document authorized, issued, or approved by a court, an official, a governmental agency, or any other governmental authority or that creates a false impression about the communication's source, authorization, or approval;

(11) using a seal, insignia, or design that simulates that of a governmental agency;

(12) representing that a consumer debt may be increased by the addition of attorney's fees, investigation fees, service fees, or other charges if a written contract or statute does not authorize the additional fees or charges;

(13) representing that a consumer debt will definitely be increased by the addition of attorney's fees, investigation fees, service fees, or other charges if the award of the fees or charges is subject to judicial discretion;

(14) representing falsely the status or nature of the services rendered by the debt collector or the debt collector's business;

(15) using a written communication that violates the United States postal laws and regulations;

(16) using a communication that purports to be from an attorney or law firm if it is not;

(17) representing that a consumer debt is being collected by an attorney if it is not; [~~or~~]

(18) representing that a consumer debt is being collected by an independent, bona fide organization engaged in the business of collecting past due accounts when the debt is being collected by a subterfuge organization under the control and direction of the person who is owed the debt; or

(19) using any other false representation or deceptive means to collect a debt or obtain information concerning a consumer.

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

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 4 on Third Reading

Amend **CSHB 7** as follows:

Strike everything below page 1, line 2 and insert the following.

ARTICLE __. PROMOTION PARTNERSHIP BETWEEN THE TEXAS DEPARTMENT OF AGRICULTURE AND CERTAIN COMMODITY PRODUCERS BOARDS

SECTION ____.1. Sec. 12.0176, Agriculture Code, is amended to read as follows:

Sec. 12.0176 Cooperation with Certain Commodity Producers Boards. The department, may as resources allow, enter into cooperative agreements with a board in order to increase the effectiveness and efficiency of the promotion of Texas agricultural products. Such cooperative agreements may include provisions relating to the programs instituted by the department under Chs. 12 and 46 of this Code, provisions relating to board contributions for promotional costs, and any other provisions the department and the board deem appropriate. Funds contributed by a board pursuant to an agreement under this section are not state funds.

SECTION ____.2. Sec. 41.002(1), Agriculture Code, is amended to read as follows:

(1) "Agricultural commodity" means an agricultural, horticultural, viticulture, or vegetable product, bees and honey, planting seed, rice, livestock or livestock product, or poultry or poultry product, produced in this state, either in its natural state or as processed by the producer. The term does not include flax. [~~or cattle.~~]

SECTION ____.3. Subchapter H, Agriculture Code, is added to read as follows:

SUBCHAPTER H. TEXAS BEEF MARKETING, EDUCATION, RESEARCH AND PROMOTION

SECTION ___.4. Sec. 41.30, Agriculture Code, is added to read as follows:

Sec. 41.30. Declaration of Policy

(a) It is the intent of the Legislature that the promotion, marketing, research and educational efforts concerning beef and beef products carried out under this Subchapter utilize existing cattle industry infrastructure to the extent possible.

(b) The Texas Beef Council, Inc, a Texas non-profit corporation chartered by the Secretary of State on March 7, 1986, shall be recognized as the entity to plan, carry out and operate programs of research, education, promotion and marketing programs.

(c) The Department may recover costs for administration of this subchapter.

(d) The council shall issue to the commissioner and the appropriate oversight committee in the Senate and House of Representatives an annual report detailing its efforts to carry out the purposes of this subchapter.

SECTION ____.5. Sec. 41.31, Agriculture Code, is added to read as follows:

Sec. 41.31, Conflict with General Commodity Law Provisions. To the extent that the provisions of this subchapter conflict with other provisions of this chapter, the provisions of this subchapter shall prevail.

SECTION ___.6. Sec. 41.32, Agriculture Code, is added to read as follows:

Sec. 41.32 Definitions

In this subchapter:

(1) "beef products" means products produced in whole or in part from beef, exclusive of milk and products made there from.

(2) "board" means the Board of Directors of the Texas Beef Council, Inc.

(3) "council" means the Texas Beef Council, Inc.

(4) "department" means the Texas Department of Agriculture.

(5) "commissioner" means the Commissioner of Agriculture.

(6) "person" means any individual, group of individuals, partnership, corporation, association, cooperative or any other entity.

(7) "producer" means any person who owns or acquires ownership of cattle except that a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

SECTION ___.7. Sec. 41.33, Agriculture Code, is added to read as follows:

Sec. 41.33 Council Composition

(a) The board shall be composed of members appointed by the commissioner under Subsection (b) of this section. The commissioner shall appoint an initial board composed of 21 members.

(b) The commissioner shall appoint the following board members, for a one year term:

(1) three (3) representatives of the Texas and Southwestern Cattle Raisers Association;

(2) three (3) representatives of the Texas Cattle Feeders Association;

(3) three (3) representatives of the Texas Farm Bureau;

(4) two (2) representatives of the Independent Cattlemen's Association;

(5) two (2) representatives of Texas purebred cattle associations, as a group;

(6) two (2) representatives of Texas dairy associations, as a group;

(7) two (2) representatives of Livestock Marketing Association of Texas;

(8) one (1) representative of meat packer/exporter associations, as a group;

(9) one (1) representative of Texas Cattle Women; and

(10) two (2) at-large directors.

(c) A vacancy on the board shall be filled by appointment by the commissioner for the unexpired term.

SECTION ____.7. Sec. 41.34, Agriculture Code, is added to read as follows:

Sec. 41.34 Establishment, Collection of Assessment; Finances.

(a) The commissioner, on the recommendation of the council, shall propose the maximum assessment in a referendum.

(b) If an assessment referendum is approved, the council shall collect the assessment.

(c) An assessment levied on cattle producers may be applied to efforts relating to the marketing, education, research and promotion of beef and beef products in Texas, the United States and international markets.

(d) Prior to operations each year the commissioner shall review and approve the council's operating budget.

(e) Funds collected by the council are not state funds and are not required to be deposited in the state treasury.

(f) The council may:

(1) accept gifts, donations, and grants of money, including appropriated funds, from state government, federal government, local governments, private corporations, or other persons, to be used for the purposes of this subchapter;

(2) borrow money upon approval of the commissioner; and

(3) take other action and exercise other authority as necessary to execute any act authorized by this subchapter or the Texas Nonprofit Corporation Act (Article 1396-101 et. seq. Vernon's Texas Civil Statutes).

(g) The commissioner and the State Auditor at any time may inspect the books and other financial records of the council.

(h) Assessments collected by the council under this subchapter are subject to Section 41.083 of this Code, but are not subject to Section 41.082 of this Code.

SECTION ___.8. Sec. 41.35, Agriculture Code, is added to read as follows:

Sec. 41.35 Conduct of Referendum; Balloting

(a) On the recommendation of the Council, the commissioner shall conduct a referendum authorized under this subchapter. Persons qualified to vote in a referendum are those producers who have owned cattle within 12 months preceding the referendum.

(b) The council shall bear all expenses incurred in conducting a referendum.

(c) An eligible cattle producer may vote only once in a referendum.

(d) Each vote is entitled to equal weight regardless of the volume of production.

(e) A referendum is approved if a simple majority of those voting vote in favor of the referendum.

(f) Individual voter information, including an individual's vote in a referendum conducted under this section, is confidential and not subject to disclosure under the Open Records law, Chapter 552 Government Code.

SECTION ___.9. Sec. 41.36, Agriculture Code, is added to read as follows:

Sec. 41.36 Authority to Adopt Rules

The commissioner may adopt rules as necessary to implement the provisions of this subchapter, including without limitation rules relating to the auditing of the books of the council, fidelity bonds required for certain council employees, conflicts of interest, penalties, and to a statewide referendum.

SECTION ____.10. Sec. 41.37, Agriculture Code, is added to read as follows:

Sec. 41.37 Penalties

(a) A person who violates this subchapter or a rule adopted under this subchapter commits an offense.

(b) An offense under this section is a Class C misdemeanor.

Renumber accordingly.

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

Senator Ratliff offered the following amendment to the bill:

Floor Amendment No. 5 on Third Reading

Amend **CSHB 7** by adding the following appropriately numbered new section to Article 16:

SECTION 16.____. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect on the 91st day after the last day of the legislative session.

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

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

CSHB 7 as amended was finally passed by the following vote: Yeas 21, Nays 8.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Madla, Nelson, Ogden, Ratliff, Staples, Wentworth, Whitmire, Williams.

Nays: Barrientos, Gallegos, Hinojosa, Lucio, Shapleigh, Van de Putte, West, Zaffirini.

Absent-excused: Bivins, Shapiro.

CONFERENCE COMMITTEE ON HOUSE BILL 3

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 3** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer, Senator Nelson in Chair, announced the appointment of the following conferees on the part of the Senate on the bill: Senators Staples, Chair; Duncan, Hinojosa, Lindsay, and Nelson.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SCR 3 by Ratliff, Staples, and Deuell, In memory of A. W. "Dub" Riter, Jr., of Tyler.

SR 66 by Lucio, In memory of José Pulido, Sr., of Edinburg.

SR 67 by Lucio, In memory of Nella Jo Jennings of Brownsville.

SR 68 by Lucio, In memory of Jose G. "Joe" Rivera, Jr., of Brownsville.

SR 72 by Brimer, In memory of Al Larsen of Fort Worth.

Welcome and Congratulatory Resolutions

SCR 4 by Zaffirini, Recognizing Sisters of Mercy for its work on behalf of the citizens of South Texas and citizens around the globe.

SR 60 by Hinojosa, Congratulating Elena Juarez of Alice on earning the title of Regional Teacher of the Year.

SR 61 by Hinojosa, Congratulating Rosavel Mora of Alice on earning the title of Regional Teacher of the Year.

SR 62 by Hinojosa, Congratulating Peggy Baldwin of McAllen on being selected as the Regional Elementary Teacher of the Year.

SR 63 by Ellis, Recognizing South Park Baptist Church in Houston on its first International Missions Day Program.

SR 64 by Ellis, Congratulating Eric and Michèle Fages Svatora on the birth of their daughter, Alexandra Clare Svatora.

SR 65 by Van de Putte, Extending best wishes to Peggy McGowen of Arlington as state president of the Ladies Auxiliary to the Veterans of Foreign Wars of the United States.

SR 69 by Lucio, Commending Derrelene and Joseph V. LaMantia, Jr., and their family for their contributions to the people of the Rio Grande Valley.

SR 70 by Lucio, Commending F. Neal and Gayle Runnels of McAllen for their contributions to their community.

SR 71 by Nelson, Welcoming representatives of the sister cities of Duncanville, Texas, and Monasterolo di Savigliano, Italy, to the Capitol.

ADJOURNMENT

On motion of Senator Whitmire, the Senate at 5:18 p.m. adjourned, in memory of Marjorie Hershey of Austin, until 2:00 p.m. Monday, September 29, 2003.

APPENDIX

COMMITTEE REPORTS

The following committee reports were received by the Secretary of the Senate in the order listed:

September 25, 2003

ADMINISTRATION — **SB 19**, **SB 20**, **HCR 3**, **HCR 4**