

# SEVENTY-FOURTH DAY

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WEDNESDAY, MAY 21, 2003

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## PROCEEDINGS

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The Senate met at 11:00 a.m. pursuant to adjournment and was called to order by Senator Lucio.

The roll was called and the following Senators were present: Armbrister, Averitt, Barrientos, Bivins, Brimer, Carona, Deuell, Duncan, Ellis, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Ratliff, Shapiro, Shapleigh, Staples, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

The Presiding Officer announced that a quorum of the Senate was present.

The Reverend Denise M. Bloomquist, First Christian Church (Disciples of Christ), Mertzon, offered the invocation as follows:

We pause in the moment of quiet to listen for that still, small voice which offers each one here the support and direction needed to do the work which must be done. And I ask for divine presence in this place of discussion, dissent, and decisions and pray for creative ideas, both old and new. May these Senators and the members of their staffs scatter the clouds of self-interest and personal agendas. Instead may their interchanges be vibrant, respectful of all Members and the resources of our state, and may the voices of all citizens, groups, and communities be heard and represented responsibly.

Grant these Members firmness in thinking, maturity in action, and the spiritual insight to realize that all good things come not because of selfish interests or actions, but rather through attentive hearts and open minds. And let them not be afraid of silence, and when they speak may it be both respectful and inclusive, allowing unity and justice to prevail. Now, for this day, may each Member have the vision to serve and be unwavering in duty. May all uphold the honor of this body and preserve the sacred trust given to them by the people they represent. And when this day is ended, may they all take with them the knowledge that life for our state is better because of the work they have done, and may the citizens know it, too. 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.

**SENATE BILL ON FIRST READING**

The following bill was introduced, read first time, and referred to the committee indicated:

**SB 1956** by Ellis

Relating to the creation of the Fourth Ward Management District; providing the authority to impose taxes and issue bonds. (Local Bill)

To Committee on Intergovernmental Relations.

**SESSION TO CONSIDER EXECUTIVE APPOINTMENTS**

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

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

The Presiding Officer asked if there were requests to sever nominees.

There were no requests offered.

**NOMINEES CONFIRMED**

The following nominees, as reported by the Committee on Nominations, were confirmed by the following vote: Yeas 31, Nays 0.

Members, Texas Racing Commission: Jesse R. Adams, Bexar County; Comer J. Cottrell, Collin County.

Member, Board of Pardons and Paroles: Stephen T. Rosales, Travis County.

Members, State Board of Dental Examiners: Tammy Allen, Tarrant County; Oscar Xavier Garcia, Cameron County; Norman Lewis Mason, Travis County; Gary W. McDonald, Harris County; Helen Hayes McKibben, Lubbock County; Marti L. Morgan, Tarrant County; Phyllis A. Stine, Midland County; George Strunk, D.D.S., Gregg County; Paul E. Stubbs, D.D.S., Travis County; Juan D. Villarreal, Cameron County; Charles Field Wetherbee, Atascosa County.

Members, Texas State Board of Medical Examiners: Patricia S. Blackwell, Midland County; Roberta M. Kalafut, D.O., Taylor County; Thomas D. Kirksey, Travis County; Eddie J. Miles, Jr., Bexar County; Elvira G. Pascua-Lim, Lubbock County; John W. Pate, Jr., M.D., El Paso County.

Members, Texas Commission of Licensing and Regulation: Frank S. Denton, Montgomery County; Fred N. Moses, Collin County; Bill C. Pittman, Travis County.

Members, Texas Municipal Retirement System Board of Trustees: H. Frank Simpson, Galveston County; Kathryn M. Usrey, Denton County.

Member, Statewide Health Coordinating Council: Russell K. Tolman, Tarrant County.

Members, Coastal Coordination Council: Jack Wayne Gibson, Brazoria County; Robert Elliott Jones, Nueces County.

Member, On-site Wastewater Treatment Research Council: Karen S. Berryman, Travis County.

Members, Board of Nurse Examiners: Thomas L. Barton, Gray County; Deborah H. Bell, Taylor County; Blanca Rosa Garcia, Ph.D., Nueces County; Brenda S. Jackson, Ph.D., R.N., Bexar County.

Member, Texas Structural Pest Control Board: Brenda Hill, Nacogdoches County.

Members, Advisory Board of Athletic Trainers: D. Leilani Cronin, Travis County; Lawrence M. Sampleton, Jr., Travis County; Michael Alan Waters, Angelina County.

Members, Texas Workers' Compensation Commission: Edward J. Sanchez, Harris County; Carolyn J. Walls, Bexar County.

Member, Private Sector Prison Industries Oversight Authority: Brian L. Hatley, El Paso County.

Members, Texas Appraiser Licensing and Certification Board: Malcolm J. Deason, Angelina County; William A. Faulk, Jr., Cameron County; Larry D. Kokel, Williamson County; L. W. "Wayne" Mayo, Collin County.

Member, Texas Public Finance Authority Board of Directors: Barry Thomas Smitherman, Harris County.

Members, Texas Commission for the Blind: Robert Gene Griffith, Williamson County; Brenda Gail Saxon, Travis County; Beverley A. Stiles, Aransas County.

Members, Texas Council on Environmental Technology: David T. Allen, Travis County; Randall J. Charbeneau, Travis County; Purnendu K. "Sandy" Dasgupta, Lubbock County; Richard Edward Ewing, Brazos County; Robert L. Glover, Tarrant County; Kuruvilla John, Nueces County; Deborah June Roberts, Galveston County; Richard William Tock, Lubbock County; Arthur Vilas, Harris County; Mark R. Wiesner, Harris County; Kyriacos Zygourakis, Harris County.

### **SENATE BILL 252 WITH HOUSE AMENDMENT**

Senator Staples called **SB 252** from the President's table for consideration of the House amendment to the bill.

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

#### **Committee Amendment No. 1**

Amend **SB 252** as follows:

(1) In SECTION 1 of the bill, in added Section 157.004(1), Finance Code (engrossed version, page 2, line 26), between "association," and "or credit" insert "Farm Credit System Institution,".

(2) In SECTION 1 of the bill, in added Section 157.004(2), Finance Code (engrossed version, page 3, line 1), between "association," and "or credit" insert "Farm Credit System Institution,".

The amendment was read.

Senator Staples moved to concur in the House amendment to **SB 252**.

The motion prevailed by a viva voce vote.

### **SENATE BILL 279 WITH HOUSE AMENDMENTS**

Senator Jackson called **SB 279** from the President's table for consideration of the House amendments to the bill.

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

#### **Amendment**

Amend **SB 279** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the continuation and functions of the Texas Department of Licensing and Regulation, including certain functions transferred to the department from the Texas Department of Insurance and the Texas Commission on Environmental Quality and including certain functions transferred from the department to the Department of Public Safety.

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

#### ARTICLE 1. TEXAS DEPARTMENT OF LICENSING AND REGULATION

SECTION 1.001. Section 51.002, Occupations Code, is amended to read as follows:

Sec. 51.002. APPLICATION OF SUNSET ACT. The Texas Commission of Licensing and Regulation and the Texas Department of Licensing and Regulation are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission and the department are abolished September 1, 2015 [~~2003~~].

SECTION 1.002. Subchapter A, Chapter 51, Occupations Code, is amended by adding Section 51.003 to read as follows:

Sec. 51.003. APPLICABILITY. This chapter applies to each regulatory program administered by the department, including any program under which a license is issued by the department.

SECTION 1.003. Section 51.052(a), Occupations Code, is amended to read as follows:

(a) The commission consists of five [~~six~~] members appointed by the governor with the advice and consent of the senate.

SECTION 1.004. Section 51.053(b), Occupations Code, is amended to read as follows:

(b) A person is not eligible for appointment as a member of the commission if the person or the person's spouse:

- (1) is regulated by the department;
- (2) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the department;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the department;

(4) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses; or

(5) ~~[is an officer, employee, or paid consultant of a trade association in a field regulated by the department;~~

~~[(6) is an employee of the department]; or~~

~~[(7) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission or department].~~

SECTION 1.005. Subchapter B, Chapter 51, Occupations Code, is amended by adding Section 51.0535 to read as follows:

Sec. 51.0535. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

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

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

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

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

SECTION 1.006. Subchapter B, Chapter 51, Occupations Code, is amended by adding Section 51.054 to read as follows:

Sec. 51.054. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

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

(1) the legislation that created the department and the commission;

(2) the programs operated by the department;

(3) the role and functions of the department;

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

(5) the current budget for the department;

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

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code;  
and  
(D) other laws relating to public officials, including conflict-of-interest laws; and

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

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

SECTION 1.007. Section 51.055(a), Occupations Code, is amended to read as follows:

(a) Members of the commission serve staggered six-year terms. The terms of one or two members expire on February 1 of each odd-numbered year.

SECTION 1.008. Section 51.056(a), Occupations Code, is amended to read as follows:

(a) The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor ~~commission shall elect one of its members as presiding officer. The presiding officer serves in that capacity for a period of two years.~~

SECTION 1.009. Sections 51.057(a) and (c), Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the commission that a member:

(1) does not have at the time of taking office ~~[appointment]~~ the qualifications required by Section 51.053 ~~[for appointment to the commission];~~

(2) does not maintain during service on the commission the qualifications required by Section 51.053 ~~[for appointment to the commission];~~

(3) is ineligible for membership under ~~[violates a prohibition established by]~~ Section 51.0535 ~~[51.053];~~ ~~[or]~~

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

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved ~~[unless the absence is excused]~~ by a majority vote of the commission.

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

SECTION 1.010. Section 51.105, Occupations Code, is amended to read as follows:

Sec. 51.105. DIVISION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly separate the policy-making [define the respective] responsibilities of the commission and the management responsibilities of the executive director and the staff of the department.

SECTION 1.011. Subchapter C, Chapter 51, Occupations Code, is amended by adding Section 51.106 to read as follows:

Sec. 51.106. INFORMATION ON STANDARDS OF CONDUCT. The executive director or the executive director's designee shall provide to members of the commission and to department employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

SECTION 1.012. Section 51.108, Occupations Code, is amended to read as follows:

Sec. 51.108. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of an equal employment opportunity to ensure that all personnel decisions transactions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

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

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

~~[(3) procedures by which a determination can be made of significant underuse in the department workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and~~

~~[(4) reasonable methods to appropriately address those areas of significant underuse].~~

(c) The ~~[(b) A]~~ policy statement prepared under Subsection (a) must:

(1) [cover an annual period,] be updated [at least] annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office [governor].

SECTION 1.013. Subchapter C, Chapter 51, Occupations Code, is amended by adding Section 51.109 to read as follows:

Sec. 51.109. STATE EMPLOYEE INCENTIVE PROGRAM. The executive director or the executive director's designee shall provide to department employees information and training on the benefits and methods of participation in the state employee incentive program.

SECTION 1.014. Sections 51.203 and 51.204, Occupations Code, are amended to read as follows:

Sec. 51.203. RULES REGARDING PROGRAMS REGULATED BY DEPARTMENT ~~[ADOPTED BY EXECUTIVE DIRECTOR]~~. The commission ~~[executive director]~~ shall adopt rules as necessary to implement each law establishing a program regulated by the department.

Sec. 51.204. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commission ~~[executive director]~~ may not adopt rules restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices.

(b) The commission ~~[executive director]~~ may not include in rules to prohibit false, misleading, or deceptive practices by a license holder a rule that:

- (1) restricts the use of any advertising medium;
- (2) restricts the license holder's personal appearance or the use of the license holder's voice in an advertisement;
- (3) relates to the size or duration of an advertisement; or
- (4) restricts the use of a trade name in advertising.

SECTION 1.015. Subchapter D, Chapter 51, Occupations Code, is amended by adding Sections 51.207 and 51.208 to read as follows:

Sec. 51.207. USE OF TECHNOLOGY. The commission shall develop and implement a policy requiring the executive director and department employees to research and propose appropriate technological solutions to improve the department's ability to perform its functions. The technological solutions must:

(1) ensure that the public is able to easily find information about the department on the Internet;

(2) ensure that persons who want to use the department's services are able to:

(A) interact with the department through the Internet; and

(B) access any service that can be provided effectively through the Internet; and

(3) be cost-effective and developed through the department's planning processes.

Sec. 51.208. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of department rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the department's jurisdiction.

(b) The department's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);



(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the department.

SECTION 1.016. Section 51.252, Occupations Code, is amended to read as follows:

Sec. 51.252. COMPLAINTS. (a) The executive director shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The department shall provide to the person filing the complaint and to each person who is a subject of the complaint information about the department's policies and procedures relating to complaint investigation and resolution.

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

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

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

(3) the subject matter of the complaint;

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

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

and

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

(c) ~~The [If a written complaint is filed that the commission or executive director has authority to resolve, the]~~ department, at least quarterly and until final disposition of the complaint, shall notify the person filing ~~[parties to]~~ the complaint and each person who is a subject of the complaint of the status of the investigation ~~[complaint]~~ unless the notice would jeopardize an undercover investigation.

(d) The commission shall adopt a procedure for documenting complaints to the department from the time of the submission of the initial complaint to the final disposition of the complaint. The commission shall publish the procedure in the Texas Register.

SECTION 1.017. Section 51.302, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) The commission shall by rule or by procedure published in the Texas Register establish a written enforcement plan that provides notice to license holders of the specific ranges of penalties that apply to specific alleged violations and the criteria by which the department determines the amount of a proposed administrative penalty.

SECTION 1.018. Section 51.353, Occupations Code, is amended to read as follows:

Sec. 51.353. ADMINISTRATIVE SANCTIONS. (a) The commission shall revoke, suspend, or refuse to renew a license or shall reprimand a license holder for a violation of this chapter, ~~[executive director shall adopt rules relating to administrative sanctions that may be enforced against a license holder regulated by the department. If~~

~~a license holder violates~~ a law establishing a regulatory program administered by the department, or a rule or order of the commission ~~[or executive director, the executive director may:~~

~~[(1) issue a written reprimand to the license holder;~~

~~[(2) revoke or suspend the license holder's license; or~~

~~[(3) place the license holder on probation if the person's license has been suspended].~~

(b) The commission may place on probation a person whose license is suspended. If a license suspension is probated, the commission ~~[executive director]~~ may require the person ~~[license holder]~~ to:

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

(2) limit practice to the areas prescribed by the commission ~~[executive director]~~; or

(3) continue or renew professional education ~~[in those areas that are the basis for the probation]~~ until the person ~~[license holder]~~ attains a degree of skill satisfactory to the commission in those areas that are the basis for the probation ~~[executive director]~~.

SECTION 1.019. Chapter 51, Occupations Code, is amended by adding Subchapter H to read as follows:

#### SUBCHAPTER H. LICENSE REQUIREMENTS

Sec. 51.401. LICENSE EXPIRATION AND RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 30th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

Sec. 51.402. EXAMINATIONS. (a) Not later than the 30th day after the date a person takes a license examination, the department shall notify the person of the results of the examination.

(b) If the examination is graded or reviewed by a testing service:

(1) the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails a license examination, the department shall furnish the person with an analysis of the person's performance on the examination.

Sec. 51.403. EXAMINATION FEE REFUND. (a) The department may refund a license examination fee to a person who is unable to take the examination if the person:

(1) provides reasonable advance notice to the department; or

(2) cannot take the examination because of an emergency.

(b) The commission by rule shall define what constitutes reasonable notice and an emergency under this section.

Sec. 51.404. ENDORSEMENT; RECIPROCITY. (a) The commission may waive any prerequisite to obtaining a license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(b) The commission may waive any prerequisite to obtaining a license for an applicant who holds a license issued by another jurisdiction with which this state has a reciprocity agreement. The commission may make an agreement, subject to the approval of the governor, with another state to allow for licensing by reciprocity.

Sec. 51.405. CONTINUING EDUCATION. The commission shall recognize, prepare, or administer continuing education programs for license holders. A license holder must participate in the programs to the extent required by the commission to keep the person's license.

SECTION 1.020. Section 51.205, Occupations Code, is renumbered as Section 51.406, Occupations Code, and amended to read as follows:

Sec. 51.406 [~~51.205~~]. STAGGERED [LICENSE EXPIRATION AND] RENEWAL OF LICENSES. [(a)] The commission by rule [executive director] may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable [annually and may provide for a renewal period that exceeds 12 months].

~~[(b) The executive director shall notify a person regulated by the department of the impending expiration of the person's license].~~

SECTION 1.021. Chapter 51, Occupations Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. TELEPHONE INFORMATION SYSTEM

Sec. 51.451. DEFINITION. In this subchapter, "licensing entity" means a department, commission, board, office, authority, or other agency or governmental entity of this state that issues an occupational license.

Sec. 51.452. TELEPHONE INFORMATION SYSTEM. The department shall establish and operate a toll-free telephone information system to provide assistance and referral services for persons who inquire about a program regulated by a licensing entity.

Sec. 51.453. TELEPHONE LISTING. A licensing entity shall list the toll-free telephone number of the information system with the entity's regular telephone number.

Sec. 51.454. FEES. The department shall charge licensing entities fees in amounts sufficient to cover the cost of implementing this subchapter, including fees on a subscription basis, on the basis of each transaction, or on another service basis.

SECTION 1.022. (a) Except as provided by Subsection (b) of this section, the changes in law made by this article in the prohibitions or qualifications applying to members of the Texas Commission of Licensing and Regulation do not affect the entitlement of a member serving on the commission immediately before September 1, 2003, to continue to serve and function as a member of the commission for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

(b) To implement the changes in law made by this article to the composition of the Texas Commission of Licensing and Regulation under Section 51.052(a), Occupations Code, of the two positions that have terms scheduled to expire on February 1, 2005, one of the positions is abolished on September 1, 2003. On or before September 1, 2003, the two members whose terms are scheduled to expire on February 1, 2005, shall determine by unanimous agreement or by lot which of the two positions shall be abolished on September 1, 2003, and shall inform the presiding officer of the Texas Commission of Licensing and Regulation of that determination.

SECTION 1.023. Not later than September 1, 2004, the Texas Department of Licensing and Regulation shall implement the toll-free telephone information system required by Section 51.452, Occupations Code, as added by this article.

SECTION 1.024. (a) In this section:

(1) "Department" means the Texas Department of Licensing and Regulation.

(2) "Licensing entity" means a department, commission, board, office, authority, or other agency or governmental entity of this state that issues an occupational license.

(3) "TexasOnline" means the project implemented under Subchapter I, Chapter 2054, Government Code, as added by Chapter 342, Acts of the 77th Legislature, Regular Session, 2001.

(b) Not later than March 1, 2004, the department shall identify licensing entities that do not use TexasOnline.

(c) Not later than September 1, 2004, the department shall assist those entities to develop websites for, and to convert to, TexasOnline.

(d) Licensing entities shall cooperate with the department to implement this section.

SECTION 1.025. Not later than March 1, 2004, the Texas Commission of Licensing and Regulation shall adopt the rules required by Section 51.302(c), Occupations Code, as added by this article.

SECTION 1.026. Section 51.053(c), Occupations Code, is repealed.

SECTION 1.027. Section 51.252, Occupations Code, as amended by this article, takes effect January 1, 2004.

## ARTICLE 2. AIR CONDITIONING AND REFRIGERATION CONTRACTORS

SECTION 2.001. Section 1302.002, Occupations Code, is amended by amending Subdivision (5) and adding Subdivision (11-a) to read as follows:

(5) "Air conditioning and refrigeration maintenance work" means all work, including repair work, required for the continued normal performance of an environmental air conditioning system, a process cooling or heating system, a commercial refrigeration system, or commercial refrigeration equipment. The term does not include:

(A) the total replacement of a system; or

(B) the installation or repair of a boiler or pressure vessel that must be installed in accordance with rules adopted by the commission [~~commissioner~~] under Chapter 755, Health and Safety Code.

(11-a) "Executive director" means the executive director of the department.

SECTION 2.002. The heading to Subchapter C, Chapter 1302, Occupations Code, is amended to read as follows:

### SUBCHAPTER C. [~~COMMISSIONER AND DEPARTMENT~~] POWERS AND DUTIES

SECTION 2.003. Section 1302.101, Occupations Code, is amended to conform to Section 2, Chapter 790, Acts of the 77th Legislature, Regular Session, 2001, and is further amended to read as follows:

Sec. 1302.101. GENERAL POWERS AND DUTIES [~~OF COMMISSIONER~~].

(a) The commission [~~commissioner~~] shall[~~;~~

~~(1)]~~ adopt rules for the practice of air conditioning and refrigeration contracting that are at least as strict as the standards provided by:

~~(1) [(A)] the Uniform Mechanical Code [published jointly by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials, as that code exists at the time the rules are adopted]; and [or]~~

~~(2) [(B)] the International [Standard] Mechanical Code.~~

~~(b) The executive director shall [published by the Southern Building Code Congress International, Inc., as that code exists at the time the rules are adopted;~~

~~[(2)] prescribe the design of an original and a renewal license.~~

~~(c) The commission shall[~~;~~ and~~

(3) maintain a record of the commission's ~~[commissioner's]~~ proceedings under this chapter.

(d) ~~(b)~~ The executive director ~~[commissioner]~~ may authorize disbursements necessary to implement this chapter, including disbursements for office expenses, equipment costs, and other necessary facilities.

SECTION 2.004. Section 1302.103, Occupations Code, is amended to read as follows:

Sec. 1302.103. RULES REGARDING USE AND DISPLAY OF LICENSE. The commission ~~[commissioner]~~, with the advice of the advisory board, shall adopt rules relating to the use, display, and advertisement of a license.

SECTION 2.005. Section 1302.201, Occupations Code, is amended to read as follows:

Sec. 1302.201. ADVISORY BOARD MEMBERSHIP. The air conditioning and refrigeration contractors advisory board consists of six members appointed by the presiding officer of the commission, with the commission's approval, ~~[governor with the advice and consent of the senate]~~ and two ex officio nonvoting members.

SECTION 2.006. Section 1302.204(a), Occupations Code, is amended to read as follows:

(a) The advisory board shall advise the commission ~~[commissioner]~~ in adopting rules and in administering and enforcing this chapter.

SECTION 2.007. Section 1302.205(b), Occupations Code, is amended to read as follows:

(b) If a vacancy occurs during an appointed member's term, the presiding officer of the commission, with the commission's approval, ~~[governor]~~ shall fill the vacancy for the remainder of the unexpired term with a person who represents the same interests as the predecessor.

SECTION 2.008. Section 1302.206, Occupations Code, is amended to read as follows:

Sec. 1302.206. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, ~~[governor]~~ shall designate one member of the advisory board to serve as presiding officer of the board for two years.

SECTION 2.009. Section 1302.261, Occupations Code, is amended to read as follows:

Sec. 1302.261. TEMPORARY LICENSE. The commission ~~[commissioner]~~ by rule may provide for the issuance of a temporary air conditioning and refrigeration contracting license to an applicant who:

(1) submits to the executive director ~~[commissioner]~~ an application on a form prescribed by the executive director ~~[commissioner]~~; and

(2) pays the required fees.

SECTION 2.010. Section 1302.354(b), Occupations Code, is amended to read as follows:

(b) The commission ~~[commissioner]~~ by rule shall adopt requirements governing the registration and issuance of a certificate of registration.

SECTION 2.011. Section 1302.355(c), Occupations Code, is amended to read as follows:

(c) The commission [~~commissioner~~] by rule shall establish requirements for evidence that satisfies this section.

SECTION 2.012. The following laws are repealed:

- (1) Section 1302.002(8), Occupations Code;
- (2) Section 1302.107, Occupations Code;
- (3) Section 1302.152, Occupations Code;
- (4) Section 1302.258, Occupations Code;
- (5) Section 1302.259, Occupations Code; and
- (6) Chapter 790, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 2.013. The changes in law made by this article applying to members of the air conditioning and refrigeration contractors advisory board do not affect the entitlement of a member serving on the board immediately before September 1, 2003, to continue to serve and function as a member of the board for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

### ARTICLE 3. ARCHITECTURAL BARRIERS

SECTION 3.001. Section 4, Article 9102, Revised Statutes, is amended by adding Subdivision (6-a) to read as follows:

(6-a) "Executive director" means the executive director of the department.

SECTION 3.002. Article 9102, Revised Statutes, is amended by adding Section 4A to read as follows:

Sec. 4A. APPLICABILITY OF OTHER LAW. Section 51.404, Occupations Code, does not apply to this article.

SECTION 3.003. Sections 5A(c)-(h) and (j), Article 9102, Revised Statutes, are amended to read as follows:

(c) An applicant for a certificate of registration must file with the commission an application on a form prescribed by the executive director [~~commissioner~~].

(d) To be eligible for a certificate of registration, an applicant must satisfy any requirements adopted by the commission [~~commissioner~~] by rule, including education and examination requirements.

(e) The executive director [~~commissioner~~] may issue a certificate of registration to perform review functions of the commission, inspection functions of the commission, or both review and inspection functions.

(f) The executive director [~~commissioner~~] may administer separate examinations for applicants for certificates of registration to perform review functions, inspection functions, or both review and inspection functions. [~~Not later than the 30th day after the examination date, the commissioner shall notify each examinee of the results of the examination.~~]

(g) The executive director [~~commissioner~~] shall issue an appropriate certificate of registration to an applicant who meets the requirements for a certificate.

(h) The commission [~~commissioner~~] by rule shall specify the term of a certificate of registration issued under this section.

(j) A certificate holder shall perform a review or inspection function of the commission in a competent and professional manner and in compliance with:

(1) standards and specifications adopted by the commission under this article; and

(2) rules adopted by the commission ~~[commissioner]~~ under this article.

SECTION 3.004. Section 7, Article 9102, Revised Statutes, is amended to read as follows:

Sec. 7. ADVISORY COMMITTEE; REVIEW OF AND COMMENT ON RULES. (a) The presiding officer of the commission, with the commission's approval, shall appoint an advisory committee for the architectural barriers program. The committee shall be composed of building professionals and persons with disabilities who are familiar with architectural barrier problems and solutions. The committee shall be composed of at least eight members. Persons with disabilities must make up a majority of the membership.

(b) A committee member serves at the will of the presiding officer of the commission. A member may not receive compensation for service on the committee but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member.

(c) The presiding officer of the commission, with the commission's approval, ~~[committee]~~ shall appoint ~~[elect]~~ a member of the committee as chair for two years. The committee shall meet at least twice each calendar year at the call of the committee chair or at the call of the commission ~~[commissioner]~~.

(d) The committee periodically shall review the rules relating to the architectural barriers program and recommend changes in the rules to the commission ~~[and the commissioner]~~. The commission shall submit all proposed changes to rules and procedures that relate to the architectural barriers program to the committee for review and comment before adoption or implementation of the new or amended rule or procedure.

SECTION 3.005. Article 9102, Revised Statutes, is amended by adding Section 9 to read as follows:

Sec. 9. COMPLAINTS. (a) A complaint made under Section 51.252, Occupations Code, that alleges that a building or facility is not in compliance with the standards and specifications adopted by the commission under this article is not eligible for final disposition until the commission determines that:

(1) the building or facility has been brought into compliance or cannot be brought into compliance; or

(2) the building or facility is exempt from compliance by statute or rule.

(b) If the building or facility cannot be brought into compliance or if the building or facility is exempt, the department shall, before final disposition of the complaint, notify the person filing the complaint that the building or facility cannot be brought into compliance or provide a reference to any rule or law that states an applicable exemption.

SECTION 3.006. The following laws are repealed:

(1) Section 4(3), Article 9102, Revised Statutes; and

(2) Section 5A(i), Article 9102, Revised Statutes.

SECTION 3.007. The changes in law made by this article applying to members of the advisory committee for the program for the elimination of architectural barriers do not affect the entitlement of a member serving on the committee immediately



before September 1, 2003, to continue to serve and function as a member of the committee for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

#### ARTICLE 4. AUCTIONEERS

SECTION 4.001. Section 1802.001, Occupations Code, is amended by adding Subdivision (8-a) to read as follows:

(8-a) "Executive director" means the executive director of the department.

SECTION 4.002. Sections 1802.059(a), (b), and (d), Occupations Code, are amended to read as follows:

(a) An applicant for an auctioneer's license who is not a resident of this state but is licensed as an auctioneer in another state must submit to the executive director [~~commissioner~~]:

- (1) a license application;
- (2) a certified copy of the auctioneer's license issued to the applicant by the state or political subdivision in which the applicant resides; and
- (3) proof that the state or political subdivision in which the applicant is licensed has competency standards equivalent to or stricter than those of this state.

(b) The executive director [~~commissioner~~] shall accept the applicant's auctioneer's license submitted under Subsection (a)(2) as proof of the applicant's professional competence and waive the examination and training requirements of Section 1802.052 if the state or political subdivision that issued the nonresident a license extends similar recognition and courtesies to this state.

(d) A nonresident applicant must submit with the application a written irrevocable consent to service of process. The consent must be in the form and supported by additional information that the commission [~~commissioner~~] by rule requires. The consent must:

- (1) provide that an action relating to any transaction subject to this chapter may be commenced against the license holder in the proper court of any county of this state in which the cause of action may arise or in which the plaintiff may reside by service of process on the executive director [~~commissioner~~] as the license holder's agent; and

- (2) include a statement stipulating and agreeing that service provided by this section is as valid and binding as if service had been made on the person according to the laws of this or any other state.

SECTION 4.003. Section 1802.101, Occupations Code, is amended to read as follows:

Sec. 1802.101. AUCTIONEER EDUCATION ADVISORY BOARD. The advisory board shall advise the commission [~~commissioner~~] on educational matters.

SECTION 4.004. Sections 1802.102(a) and (b), Occupations Code, are amended to read as follows:

(a) The advisory board consists of five members appointed as follows:

- (1) three members who are licensed auctioneers appointed by the presiding officer of the commission, with the commission's approval [~~commissioner~~];

- (2) the executive director of the Texas Department of Economic Development or the director's designee; and

- (3) the commissioner of education or the commissioner's designee.

(b) In appointing advisory board members under Subsection (a)(1), the presiding officer of the commission [~~commissioner~~] may not appoint members who reside in contiguous senatorial districts.

SECTION 4.005. Section 1802.103(a), Occupations Code, is amended to read as follows:

(a) The members appointed under Section 1802.102(a)(1) serve two-year terms that expire on September 1. If a vacancy occurs during the term of such a member, the presiding officer of the commission, with the commission's approval, [~~commissioner~~] shall appoint a replacement to serve for the remainder of the term.

SECTION 4.006. Section 1802.104, Occupations Code, is amended to read as follows:

Sec. 1802.104. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, shall appoint a member of the advisory board to serve [~~shall designate one of its members~~] as presiding officer of the board. The presiding officer serves for two years.

SECTION 4.007. Section 1802.109, Occupations Code, is amended to read as follows:

Sec. 1802.109. AUCTIONEER EDUCATION PROGRAMS. (a) The advisory board shall:

- (1) evaluate educational programs, seminars, and training projects; and
- (2) make recommendations to the commission [~~commissioner~~] on their usefulness and merit as continuing education tools.

(b) On the recommendation of the advisory board, the commission [~~commissioner~~] may fund or underwrite specific classes, seminars, or events for the education and advancement of the auctioneering profession in this state.

SECTION 4.008. Section 1802.153(a), Occupations Code, is amended to read as follows:

(a) In addition to any other fees required by this chapter, an applicant entitled to receive a license under this chapter must pay a fee [~~of \$100~~] before the executive director [~~commissioner~~] issues the license.

SECTION 4.009. Section 1802.201, Occupations Code, is amended to read as follows:

Sec. 1802.201. INVESTIGATION OF COMPLAINTS. The executive director [~~commissioner~~] may, on the executive director's [~~commissioner's~~] motion, and shall, on the written [~~and verified~~] complaint of a person aggrieved by the actions of an auctioneer in an auction, investigate an alleged violation of this chapter by a licensed or unlicensed auctioneer or an applicant.

SECTION 4.010. Sections 1802.202(a) and (b), Occupations Code, are amended to read as follows:

(a) A person who deals with an auctioneer licensed under this chapter and who is aggrieved by an action of the auctioneer as a result of a violation of a contract made with the auctioneer may initiate a claim against the fund by[±

[~~(±)~~] filing with the department a [~~sworn~~] complaint against the auctioneer[±  
and

[~~(2)~~ paying to the department a filing fee of \$50].

(b) The executive director [~~commissioner~~] may not pay a claim against an auctioneer who was not licensed at the time of the transaction on which the claim is based.

SECTION 4.011. Section 1802.203(c), Occupations Code, is amended to read as follows:

(c) After the hearing, the hearings examiner shall prepare a proposal for decision for the commission [~~commissioner~~].

SECTION 4.012. Section 1802.204, Occupations Code, is amended to read as follows:

Sec. 1802.204. APPEAL. A party may appeal a decision of the commission [~~commissioner~~] in the manner provided for a contested case under Chapter 2001, Government Code.

SECTION 4.013. Section 1802.207, Occupations Code, is amended to read as follows:

Sec. 1802.207. REIMBURSEMENT; INTEREST. (a) If the executive director [~~commissioner~~] pays a claim against an auctioneer, the auctioneer shall:

(1) reimburse the fund immediately or agree in writing to reimburse the fund on a schedule to be determined by rule of the commission [~~commissioner~~]; and

(2) immediately pay the aggrieved party any amount due to that party or agree in writing to pay the party on a schedule to be determined by rule of the commission [~~commissioner~~].

(b) Payments made by an auctioneer to the fund or to an aggrieved party under this section include interest accruing at the rate of eight percent a year beginning on the date the executive director [~~commissioner~~] pays the claim.

SECTION 4.014. Section 1802.209(a), Occupations Code, is amended to read as follows:

(a) This subchapter and Section 1802.252 do not limit the commission's [~~commissioner's~~] authority to take disciplinary action against a license holder for a violation of this chapter or a rule adopted under this chapter.

SECTION 4.015. Section 1802.251, Occupations Code, is amended to read as follows:

Sec. 1802.251. DENIAL OF APPLICATION; SUSPENSION OR REVOCATION OF LICENSE. The commission [~~commissioner~~] may deny an application for a license or suspend or revoke the license of any auctioneer for:

(1) violating this chapter or a rule adopted under this chapter;

(2) obtaining a license through false or fraudulent representation;

(3) making a substantial misrepresentation in an application for an auctioneer's license;

(4) engaging in a continued and flagrant course of misrepresentation or making false promises through an agent, advertising, or otherwise;

(5) failing to account for or remit, within a reasonable time, money belonging to another that is in the auctioneer's possession and commingling funds of another with the auctioneer's funds or failing to keep the funds of another in an escrow or trust account; or

(6) ~~[being convicted in a court of this state or another state of a criminal offense involving moral turpitude or a felony; or~~

~~(7)~~ violating the Business & Commerce Code in conducting an auction.

SECTION 4.016. Section 1802.252, Occupations Code, is amended to read as follows:

Sec. 1802.252. REVOCATION FOR CLAIM ON FUND. (a) The commission ~~[commissioner]~~ may revoke a license issued under this chapter if the executive director ~~[commissioner]~~ makes a payment from the fund as the result of an action of the license holder.

(b) The commission ~~[commissioner]~~ may probate an order revoking a license.

(c) An auctioneer is not eligible for a new license until the auctioneer has repaid in full the amount paid from the fund on the auctioneer's account, including interest, unless:

(1) a hearing is held; and

(2) the executive director ~~[commissioner]~~ issues a new probated license.

SECTION 4.017. Section 1802.253, Occupations Code, is amended to read as follows:

Sec. 1802.253. HEARING. (a) Before denying an application for a license ~~[or suspending or revoking a license]~~, the commission ~~[commissioner]~~ shall:

(1) set the matter for a hearing; and

(2) before the ~~[30th day before the]~~ hearing date, notify the applicant ~~[or license holder]~~ in writing of:

(A) the charges alleged or the question to be determined at the hearing;

and

(B) the date and location of the hearing.

(b) At a hearing under this section, the applicant ~~[or license holder]~~ may:

(1) be present and be heard in person or by counsel; and

(2) have an opportunity to offer evidence by oral testimony, affidavit, or deposition.

(c) Written notice may be served by personal delivery to the applicant ~~[or license holder]~~ or by certified mail to the last known mailing address of the applicant ~~[or license holder]~~.

(d) If the applicant ~~[or license holder]~~ who is the subject of the hearing is an associate auctioneer, the commission ~~[commissioner]~~ shall provide written notice to the auctioneer who employs the associate auctioneer or who has agreed to employ the associate auctioneer by mailing the notice by certified mail to the auctioneer's last known mailing address.

SECTION 4.018. Section 1802.303(a), Occupations Code, is amended to read as follows:

(a) A person commits an offense if the person violates a provision of this chapter or a rule adopted by the commission ~~[commissioner]~~ under this chapter for which a penalty is not provided.

SECTION 4.019. The following laws are repealed:

(1) Section 1802.001(7), Occupations Code;

(2) Section 1802.057, Occupations Code;

(3) Section 1802.061, Occupations Code; and

(4) Section 1802.254, Occupations Code.

SECTION 4.020. The changes in law made by this article applying to members of the Auctioneer Education Advisory Board do not affect the entitlement of a member serving on the board immediately before September 1, 2003, to continue to serve and function as a member of the board for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

#### ARTICLE 5. BACKFLOW PREVENTION ASSEMBLY TESTERS

SECTION 5.001. Section 341.034(c), Health and Safety Code, is amended to read as follows:

(c) A person who repairs or tests the installation or operation of backflow prevention assemblies must hold a license issued by the Texas Department of Licensing and Regulation [~~commission~~] under Chapter 51, Occupations [~~37, Water~~] Code.

SECTION 5.002. (a) On November 1, 2003:

(1) all functions and activities relating to Section 341.034(c), Health and Safety Code, performed by the Texas Commission on Environmental Quality immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the Texas Commission on Environmental Quality that relates to Section 341.034(c), Health and Safety Code, is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a license or other document issued by the Texas Commission on Environmental Quality that relates to Section 341.034(c), Health and Safety Code, is considered a license or other document issued by the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(4) a reference in law or an administrative rule to the Texas Commission on Environmental Quality that relates to Section 341.034(c), Health and Safety Code, means the Texas Department of Licensing and Regulation;

(5) a complaint, investigation, or other proceeding before the Texas Commission on Environmental Quality that is related to Section 341.034(c), Health and Safety Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas Commission on Environmental Quality in an action or proceeding to which the Texas Commission on Environmental Quality is a party;

(6) all money, contracts, leases, property, and obligations of the Texas Commission on Environmental Quality related to Section 341.034(c), Health and Safety Code, are transferred to the Texas Department of Licensing and Regulation;

(7) all property in the custody of the Texas Commission on Environmental Quality related to Section 341.034(c), Health and Safety Code, is transferred to the Texas Department of Licensing and Regulation; and

(8) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Commission on Environmental Quality related to Section 341.034(c), Health and Safety Code, is transferred to the Texas Department of Licensing and Regulation.

(b) Before November 1, 2003, the Texas Commission on Environmental Quality may agree with the Texas Department of Licensing and Regulation to transfer any property of the Texas Commission on Environmental Quality to the Texas Department of Licensing and Regulation to implement the transfer required by this article.

(c) In the period beginning on the effective date of this Act and ending on November 1, 2003, the Texas Commission on Environmental Quality shall continue to perform functions and activities under Section 341.034(c), Health and Safety Code, as if that section had not been amended by this Act, and the former law is continued in effect for that purpose.

#### ARTICLE 6. BOILERS

SECTION 6.001. Section 755.001, Health and Safety Code, is amended by amending Subdivisions (5), (6), and (23) and adding Subdivision (7-a) to read as follows:

(5) "Certificate of operation" means a certificate issued by the executive director ~~[commissioner]~~ to allow the operation of a boiler.

(6) "Commission" ~~["Commissioner"]~~ means the Texas Commission of Licensing and Regulation ~~[commissioner of licensing and regulation]~~.

(7-a) "Executive director" means the executive director of the department.

(23) "Standard boiler" means a boiler that bears a Texas stamp, the stamp of a nationally recognized engineering professional society, or the stamp of any jurisdiction that has adopted a standard of construction equivalent to the standard required by the executive director ~~[commissioner]~~.

SECTION 6.002. Sections 755.011(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The board is composed of the following nine members appointed by the presiding officer of the commission, with the commission's approval ~~[commissioner]~~:

- (1) three members representing persons who own or use boilers in this state;
- (2) three members representing companies that insure boilers in this state;
- (3) one member representing boiler manufacturers or installers;
- (4) one member who is a mechanical engineer and a member of the faculty of a recognized college of engineering in this state; and
- (5) one member representing a labor union.

(d) The executive director ~~[commissioner]~~ serves as an ex officio board member.

SECTION 6.003. Section 755.013, Health and Safety Code, is amended to read as follows:

Sec. 755.013. PRESIDING OFFICER ~~[CHAIRMAN]~~. The chief inspector serves as presiding officer ~~[chairman]~~ of the board.

SECTION 6.004. Section 755.014, Health and Safety Code, is amended to read as follows:

Sec. 755.014. REMOVAL OF BOARD MEMBERS; VACANCY. (a) The commission ~~[commissioner]~~ may remove a board member for inefficiency or neglect of official duty.

(b) A board member's office becomes vacant on the resignation, death, suspension, or incapacity of the member. The presiding officer of the commission ~~[commissioner]~~ shall appoint, in the same manner as the original appointment, a person to serve for the remainder of the unexpired term.

SECTION 6.005. Section 755.016, Health and Safety Code, is amended to read as follows:

Sec. 755.016. MEETINGS. The board shall meet at least twice each year at the call of the presiding officer [~~chairman~~] at a place designated by the board.

SECTION 6.006. Section 755.017, Health and Safety Code, is amended to read as follows:

Sec. 755.017. POWERS AND DUTIES. The board shall advise the commission [~~commissioner~~] in the adoption of definitions and rules relating to the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and their appurtenances.

SECTION 6.007. Section 755.030(a), Health and Safety Code, is amended to read as follows:

(a) In addition to the fees described by Section 51.202, Occupations Code, the commission may authorize the collection of fees for:

- (1) boiler inspections, including fees for special inspections; and
- (2) other activities administered by the boiler inspection section and authorized by rule of the commission [~~executive director of the department~~].

SECTION 6.008. Section 755.032, Health and Safety Code, is amended to read as follows:

Sec. 755.032. RULES. (a) The commission [~~commissioner~~] may adopt and enforce rules, in accordance with standard boiler usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

(b) The executive director [~~commissioner~~] may exchange information, including data on experience, with other authorities that inspect boilers or their appurtenances, to obtain information necessary to adopt rules.

(c) The executive director [~~commissioner~~] or a department employee may not prescribe the make, brand, or kind of boilers or any appurtenances on the boiler to purchase.

(d) The executive director [~~commissioner~~] or a department employee may not prescribe the make, brand, or kind of boilers to purchase.

SECTION 6.009. Section 755.033, Health and Safety Code, is amended to read as follows:

Sec. 755.033. INTERAGENCY INSPECTION AGREEMENTS. (a) The executive director [~~commissioner~~] shall enter into interagency agreements with the Texas Department of Health, the Texas Commission on Fire Protection, and the Texas Department [~~State Board~~] of Insurance under which inspectors, marshals, or investigators from those agencies who discover unsafe or unregistered boilers in the course and scope of inspections conducted as part of regulatory or safety programs administered by those agencies are required to report the unsafe or unregistered boilers to the executive director [~~commissioner~~].

(b) The executive director [~~commissioner~~] may enter into analogous agreements with local fire marshals.

(c) The commission [~~commissioner~~] shall adopt rules relating to the terms and conditions of an interagency agreement entered into under this section.

SECTION 6.010. Sections 755.041(b) and (d), Health and Safety Code, are amended to read as follows:

(b) On written request, an owner or operator who does not comply with a preliminary order is entitled to a hearing before the executive director [~~commissioner~~] to show cause for not enforcing the preliminary order. If, after the hearing, the executive director [~~commissioner~~] determines that the boiler is unsafe and that the preliminary order should be enforced, or that other acts are necessary to make the boiler safe, the executive director [~~commissioner~~] may order or confirm the withholding of the certificate of operation for that boiler, and may impose additional requirements as necessary for the repair or alteration of the boiler or the correction of the unsafe conditions.

(d) This section does not limit the executive director's [~~commissioner's~~] authority under Section 755.028 or the commission's authority under Section 755.032.

SECTION 6.011. Section 755.043(a), Health and Safety Code, is amended to read as follows:

(a) A person, firm, or corporation commits an offense if:

(1) the person, firm, or corporation owns a boiler in this state, has the custody, management, use, or operation of a boiler in this state, or is otherwise subject to this chapter or a rule adopted under this chapter; and

(2) the person, firm, or corporation violates this chapter, a rule adopted under this chapter, or an order issued by the commission, the executive director, [~~commissioner~~] or a regularly employed inspector authorized to enforce this chapter and rules and orders.

SECTION 6.012. Section 755.045, Health and Safety Code, is amended to read as follows:

Sec. 755.045. NOTICE OF RULE OR ORDER REQUIRED BEFORE PROSECUTION. A criminal action may not be maintained against any person relating to the violation of a rule adopted or an order issued under this chapter until the commission [~~commissioner~~] gives notice of the rule or order.

SECTION 6.013. Section 755.046, Health and Safety Code, is amended to read as follows:

Sec. 755.046. AFFIDAVIT OF ORDERS. An affidavit is admissible as evidence in any civil or criminal action involving an order adopted by the commission or the executive director [~~commissioner~~] and the publication of the order, without further proof of the order's issuance or publication or of the contents of the order, if the affidavit:

(1) is issued under the seal of the commission or the executive director [~~commissioner~~];

(2) is executed by the commission, the executive director [~~commissioner~~], the chief inspector, or a deputy inspector;

(3) states the terms of the order;

(4) states that the order was issued and published; and

(5) states that the order was in effect during the period specified by the affidavit.

SECTION 6.014. The following laws are repealed:

(1) Sections 755.024(c), (d), (e), and (h), Health and Safety Code; and

(2) Section 755.031, Health and Safety Code.



SECTION 6.015. The changes in law made by this article applying to members of the board of boiler rules do not affect the entitlement of a member serving on the board immediately before September 1, 2003, to continue to serve and function as a member of the board for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

#### ARTICLE 7. CAREER COUNSELING SERVICES

SECTION 7.001. Section 2502.001, Occupations Code, is amended by amending Subdivision (3) and adding Subdivision (4-a) to read as follows:

(3) "Commission" [~~Commissioner~~] means the Texas Commission of Licensing and Regulation [~~commissioner of licensing and regulation~~].

(4-a) "Executive director" means the executive director of the department.

SECTION 7.002. Section 2502.056, Occupations Code, is amended to read as follows:

Sec. 2502.056. RULES. The commission [~~commissioner~~] may adopt rules relating to the administration and enforcement of the certificate of authority program created under this subchapter.

SECTION 7.003. Subchapter B, Chapter 2502, Occupations Code, is amended by adding Section 2502.058 to read as follows:

Sec. 2502.058. APPLICABILITY OF OTHER LAW. Section 51.404 does not apply to this chapter.

SECTION 7.004. Section 2502.202(b), Occupations Code, is amended to read as follows:

(b) Not later than 10 days [~~48 hours~~] after a career counseling service receives a written complaint, the service shall respond to the complaint. Not later than the 30th [~~40th~~] day after the date the complaint is received, the service shall resolve the complaint.

SECTION 7.005. Section 2502.203(a), Occupations Code, is amended to read as follows:

(a) If a career counseling service cannot resolve a complaint within the period described by Section 2502.202, the service shall:

(1) refer the complaint to a qualified independent arbitration organization recognized by the department; and

(2) resolve the complaint not later than the 60th [~~30th~~] day after the date the arbitration begins [~~complaint is referred for arbitration~~].

SECTION 7.006. Section 2502.252, Occupations Code, is amended to read as follows:

Sec. 2502.252. COMPLAINT AND INVESTIGATION. (a) A person [~~by sworn affidavit~~] may file with the executive director [~~commissioner~~] a complaint alleging a violation of this chapter.

(b) On receipt of the complaint, the executive director [~~commissioner~~] shall investigate the alleged violation and may:

(1) inspect any record relevant to the complaint; and

(2) subpoena the record and any necessary witness.

SECTION 7.007. Sections 2502.253(a) and (c), Occupations Code, are amended to read as follows:

(a) If the executive director [~~commissioner~~] determines as a result of an investigation that a violation of this chapter may have occurred, the executive director [~~commissioner~~] shall hold a hearing [~~not later than the 45th day after the date the complaint was filed under Section 2502.252~~].

(c) The executive director [~~commissioner~~] shall render a decision on the alleged violation [~~not later than the eighth day~~] after [~~the date~~] the hearing is concluded.

SECTION 7.008. Section 2502.254, Occupations Code, is amended to read as follows:

Sec. 2502.254. SANCTIONS. (a) If, after a hearing, the commission [~~commissioner~~] determines that a career counseling service has violated this chapter, the commission [~~commissioner~~] may, as appropriate:

(1) issue a warning to the service; or

(2) suspend or revoke the certificate of authority issued to the service.

(b) If, after a hearing, the commission [~~commissioner~~] determines that a career counseling service has violated this chapter, the executive director [~~commissioner~~] may award the complainant an amount equal to the amount of the fee charged by the service.

SECTION 7.009. Section 2502.255, Occupations Code, is amended to read as follows:

Sec. 2502.255. REISSUANCE OF CERTIFICATE AFTER REVOCATION. If the commission [~~commissioner~~] revokes the certificate of authority of a career counseling service under Section 2502.254, the service and any owner of that service may not apply for a new certificate until after the third anniversary of the date the certificate was revoked.

SECTION 7.010. Sections 2502.057 and 2502.101, Occupations Code, are repealed.

## ARTICLE 8. COMBATIVE SPORTS

SECTION 8.001. Section 2052.002, Occupations Code, is amended by amending Subdivision (4) and adding Subdivision (8-a) to read as follows:

(4) "Commission" [~~"Commissioner"~~] means the Texas Commission of Licensing and Regulation [~~commissioner of licensing and regulation or the commissioner's designated representative~~].

(8-a) "Executive director" means the executive director of the department.

SECTION 8.002. Subchapter A, Chapter 2052, Occupations Code, is amended by adding Section 2052.003 to read as follows:

Sec. 2052.003. APPLICABILITY OF OTHER LAW. Section 51.401 does not apply to this chapter.

SECTION 8.003. The heading to Subchapter B, Chapter 2052, Occupations Code, is amended to read as follows:

### SUBCHAPTER B. POWERS AND DUTIES [~~OF DEPARTMENT AND COMMISSIONER~~]

SECTION 8.004. Section 2052.052, Occupations Code, is amended to read as follows:

Sec. 2052.052. RULES. (a) The commission [~~commissioner~~] shall adopt reasonable and necessary rules to administer this chapter.

(b) The commission [~~commissioner~~] may adopt rules:

- (1) governing professional kickboxing contests and exhibitions; and
- (2) establishing reasonable qualifications for an applicant seeking a license from the department under this chapter.

SECTION 8.005. Section 2052.054, Occupations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The commission [~~commissioner~~] may recognize, prepare, or administer continuing education programs for persons licensed under this chapter.

(c) Section 51.405 does not apply to this chapter.

SECTION 8.006. Section 2052.103, Occupations Code, is amended to read as follows:

Sec. 2052.103. ELIMINATION TOURNAMENT BOXING PROMOTER LICENSE APPLICATION REQUIREMENTS. (a) An applicant for an elimination tournament boxing promoter's license under this chapter must apply on a form furnished by the executive director [~~commissioner~~].

(b) An application must be accompanied by an application fee [~~of not more than \$1,000~~] and, if the applicant charges a fee for admission to the elimination tournament or awards a trophy, prize, including a prize of money, or other item of value of more than \$50 to a contestant winning the elimination tournament:

(1) a \$50,000 surety bond subject to approval by the executive director [~~commissioner~~] and conditioned on the applicant's payment of:

(A) the tax imposed under Section 2052.151; and

(B) a claim against the applicant as described by Section 2052.109(a)(3); and

(2) proof of not less than \$10,000 accidental death or injury insurance coverage for each contestant participating in the elimination tournament.

SECTION 8.007. Section 2052.251, Occupations Code, is amended to read as follows:

Sec. 2052.251. BOXING GLOVES. A boxing event contestant, other than an elimination tournament contestant under Subchapter E, shall wear eight-ounce boxing gloves, unless the commission [~~commissioner~~] by rule requires or permits a contestant to wear heavier gloves.

SECTION 8.008. The following laws are repealed:

(1) Section 2052.104, Occupations Code;

(2) Section 2052.112, Occupations Code; and

(3) Section 2052.301, Occupations Code.

#### ARTICLE 9. COURT INTERPRETERS

SECTION 9.001. Section 57.041, Government Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Executive director" means the executive director of the department.

SECTION 9.002. Sections 57.042(a), (c), (e), and (g), Government Code, are amended to read as follows:

(a) The licensed court interpreter advisory board is established as an advisory board to the commission [~~department~~]. The board is composed of nine members appointed by the presiding officer of the commission, with the commission's approval [~~governor~~]. Members of the board serve staggered six-year terms, with the terms of one-third of the members expiring on February 1 of each odd-numbered year.

(c) The presiding officer of the commission, with the commission's approval, ~~[At the initial meeting of the board and at the first meeting after new members take office, the board]~~ shall select from the board ~~[its]~~ members a presiding officer of the board to serve for two years.

(e) The presiding officer of the commission, with the commission's approval, ~~[commissioner]~~ may remove a member of the board for inefficiency or neglect of duty in office. If a vacancy occurs on the board, the presiding officer of the commission, with the commission's approval, ~~[governor]~~ shall appoint a member who represents the same interests as the former member to serve the unexpired term.

(g) The board shall advise the commission ~~[commissioner]~~ regarding the adoption of rules and the design of a licensing examination.

SECTION 9.003. Sections 57.043(a) and (b), Government Code, are amended to read as follows:

(a) The executive director ~~[commissioner]~~ shall issue a court interpreter license to an applicant who:

(1) can interpret for an individual who can hear but who does not comprehend English or communicate in English;

(2) passes the appropriate examination prescribed by the executive director ~~[commissioner]~~; and

(3) possesses the other qualifications for the license required by this subchapter or by rules adopted under this subchapter.

(b) The commission ~~[commissioner]~~ shall:

~~[(1)]~~ adopt rules relating to licensing under this subchapter~~;~~ and the executive director shall

~~[(2)]~~ prescribe all forms required under this subchapter.

SECTION 9.004. Section 57.048, Government Code, is amended to read as follows:

Sec. 57.048. SUSPENSION AND REVOCATION OF LICENSES; REISSUANCE. (a) After a hearing, the commission ~~[commissioner]~~ shall suspend or revoke a court interpreter license on a finding that the individual:

(1) made a material misstatement in an application for a license;

(2) ~~[willfully]~~ disregarded or violated this subchapter or a rule adopted under this subchapter; or

(3) ~~[has been convicted of a felony or of any crime in which an essential element of the offense is misstatement, fraud, or dishonesty; or~~

~~[(4)]~~ engaged in dishonorable or unethical conduct likely to deceive, defraud, or harm the public or a person for whom the interpreter interprets.

(b) The executive director ~~[commissioner]~~ may reissue a license to an individual whose license has been revoked if the individual applies in writing to the department and shows good cause to justify reissuance of the license.

SECTION 9.005. Section 57.041(3), Government Code, is repealed.

SECTION 9.006. The changes in law made by this article applying to members of the licensed court interpreter advisory board do not affect the entitlement of a member serving on the board immediately before September 1, 2003, to continue to

serve and function as a member of the board for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

#### ARTICLE 10. CUSTOMER SERVICE INSPECTORS

SECTION 10.001. Section 341.034(d), Health and Safety Code, is amended to read as follows:

(d) A person who inspects homes and businesses to identify potential or actual cross-connections or other contaminant hazards in public water systems must hold a license issued by the Texas Department of Licensing and Regulation ~~[commission]~~ under Chapter 51, Occupations ~~[37, Water]~~ Code, unless the person is licensed by the Texas State Board of Plumbing Examiners as a plumbing inspector or water supply protection specialist.

SECTION 10.002. (a) On November 1, 2003:

(1) all functions and activities relating to Section 341.034(d), Health and Safety Code, performed by the Texas Commission on Environmental Quality immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the Texas Commission on Environmental Quality that relates to Section 341.034(d), Health and Safety Code, is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a license or other document issued by the Texas Commission on Environmental Quality that relates to Section 341.034(d), Health and Safety Code, is considered a license or other document issued by the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(4) a reference in law or an administrative rule to the Texas Commission on Environmental Quality that relates to Section 341.034(d), Health and Safety Code, means the Texas Department of Licensing and Regulation;

(5) a complaint, investigation, or other proceeding before the Texas Commission on Environmental Quality that is related to Section 341.034(d), Health and Safety Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas Commission on Environmental Quality in an action or proceeding to which the Texas Commission on Environmental Quality is a party;

(6) all money, contracts, leases, property, and obligations of the Texas Commission on Environmental Quality related to Section 341.034(d), Health and Safety Code, are transferred to the Texas Department of Licensing and Regulation;

(7) all property in the custody of the Texas Commission on Environmental Quality related to Section 341.034(d), Health and Safety Code, is transferred to the Texas Department of Licensing and Regulation; and

(8) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Commission on Environmental Quality related to Section 341.034(d), Health and Safety Code, is transferred to the Texas Department of Licensing and Regulation.

(b) Before November 1, 2003, the Texas Commission on Environmental Quality may agree with the Texas Department of Licensing and Regulation to transfer any property of the Texas Commission on Environmental Quality to the Texas Department of Licensing and Regulation to implement the transfer required by this article.

(c) In the period beginning on the effective date of this Act and ending on November 1, 2003, the Texas Commission on Environmental Quality shall continue to perform functions and activities under Section 341.034(d), Health and Safety Code, as if that section had not been amended by this Act, and the former law is continued in effect for that purpose.

#### ARTICLE 11. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

SECTION 11.001. Section 754.011, Health and Safety Code, is amended by adding Subdivision (6-a) to read as follows:

(6-a) "Executive director" means the executive director of the department.

SECTION 11.002. Sections 754.012(a)-(c), Health and Safety Code, are amended to read as follows:

(a) The elevator advisory board is composed of nine members appointed by the presiding officer of the commission, with the commission's approval, ~~[commissioner]~~ as follows:

(1) a representative of the insurance industry or a certified elevator inspector;

(2) a representative of elevator, escalator, and related equipment constructors;

(3) a representative of owners or managers of buildings having fewer than six stories and having an elevator, an escalator, or related equipment;

(4) a representative of owners or managers of buildings having six stories or more and having an elevator, an escalator, or related equipment;

(5) a representative of independent elevator, escalator, and related equipment maintenance companies;

(6) a representative of elevator, escalator, and related equipment manufacturers;

(7) a representative of professional engineers or architects;

(8) a public member; and

(9) a public member with a physical disability.

(b) Board members serve at the will of the commission ~~[commissioner]~~.

(c) The presiding officer of the commission, with the commission's approval, ~~[commissioner]~~ shall appoint a presiding officer of the board to serve for two years.

SECTION 11.003. Section 754.013, Health and Safety Code, is amended to read as follows:

Sec. 754.013. BOARD DUTIES. To protect public safety and to identify and correct potential hazards, the board shall advise the commission ~~[commissioner]~~ on:

(1) the adoption of appropriate standards for the installation, alteration, operation, and inspection of elevators, escalators, and related equipment;

(2) the status of elevators, escalators, and related equipment used by the public in this state; and

(3) any other matter considered relevant by the commission ~~[commissioner]~~.

SECTION 11.004. The heading to Section 754.014, Health and Safety Code, is amended to read as follows:

Sec. 754.014. STANDARDS ADOPTED BY COMMISSION [~~COMMISSIONER~~].

SECTION 11.005. Sections 754.014(a)-(h) and (j), Health and Safety Code, are amended to read as follows:

(a) The commission [~~commissioner~~] shall adopt standards for the installation, alteration, operation, and inspection of elevators, escalators, and related equipment used by the public in:

(1) buildings owned or operated by the state, a state-owned institution or agency, or a political subdivision of the state; and

(2) buildings that contain an elevator, an escalator, or related equipment that is open to the general public, including a hotel, motel, apartment house, boardinghouse, church, office building, shopping center, or other commercial establishment.

(b) Standards adopted by the commission [~~commissioner~~] may not contain requirements in addition to the requirements in the ASME Code A17.1 or ASME Code A17.3.

(c) Standards adopted by the commission [~~commissioner~~] must require elevators, escalators, and related equipment to comply with the installation requirements of the following, whichever is the least restrictive:

(1) the ASME Code A17.1 that was in effect on the date of installation of the elevators, escalators, and related equipment; or

(2) an applicable municipal ordinance governing the installation of elevators, escalators, and related equipment that was in effect on the date of installation.

(d) Standards adopted by the commission [~~commissioner~~] must require elevators, escalators, and related equipment to comply with the installation requirements of the 1994 ASME Code A17.3 that contains minimum safety standards for all elevators, escalators, and related equipment, regardless of the date of installation.

(e) On written request, the executive director [~~commissioner~~] shall grant a delay for compliance with the applicable ASME Code A17.1 or the 1994 ASME Code A17.3 until a specified time if compliance is not readily achievable, as that phrase is defined in the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.), or regulations adopted under that Act.

(f) On written request, the executive director [~~commissioner~~] shall grant a delay until September 1, 2005, for compliance with the requirements for door restrictors or firefighter's service in the 1994 ASME Code A17.3 if those requirements were not included in the ASME Code A17.1 that was in effect on the date of installation of the elevator, escalator, or related equipment and that equipment was not subsequently installed by an owner of the elevator, escalator, or related equipment.

(g) The executive director [~~commissioner~~] may grant a waiver of compliance with the applicable ASME Code A17.1 or the 1994 ASME Code A17.3 if the executive director [~~commissioner~~] finds that:

(1) the building in which the elevator, escalator, or related equipment is located is a qualified historic building or facility or the noncompliance is due to structural components of the building; and

(2) noncompliance will not constitute a significant threat to passenger safety.

(h) The executive director [~~commissioner~~] may grant a waiver of compliance with the firefighter's service provisions of the ASME Code A17.1 or the 1994 ASME Code A17.3 in an elevator that exclusively serves a vehicle parking garage in a building that:

- (1) is used only for parking;
- (2) is constructed of noncombustible materials; and
- (3) is not greater than 75 feet in height.

(j) The executive director [~~commissioner~~] may charge a reasonable fee as set by the commission for an application for waiver or delay. One application for a waiver or delay may contain all requests related to a particular building. A delay may not be granted indefinitely but must be granted to a specified time.

SECTION 11.006. Section 754.015, Health and Safety Code, is amended to read as follows:

Sec. 754.015. RULES. (a) The commission [~~commissioner~~] by rule shall provide for:

- (1) the inspection and certification once each calendar year of elevators, escalators, and related equipment covered by standards adopted under this subchapter;
- (2) the enforcement of those standards;
- (3) the certification of qualified persons as inspectors for the purposes of this subchapter; and
- (4) the form of the inspection report and certificate of compliance.

(b) The commission [~~commissioner~~] by rule may not require that:

- (1) inspection be made more often than once per year of elevators, escalators, and related equipment; or
- (2) persons post a bond or furnish insurance as a condition of certification[; ~~and~~

~~[(3) inspection reports or certificates of compliance be placed in locations other than one provided in Section 754.019(4)].~~

SECTION 11.007. Section 754.016, Health and Safety Code, is amended to read as follows:

Sec. 754.016. INSPECTION REPORTS [~~REPORT~~] AND CERTIFICATES [~~CERTIFICATE~~] OF COMPLIANCE. (a) Inspection reports [~~An inspection report~~] and certificates [~~a certificate~~] of compliance required under this subchapter must cover all elevators, escalators, and related equipment in a building or structure appurtenant to the building, including a parking facility, that are owned by the same person or persons. [~~There shall be only one inspection report and one certificate of compliance for each building.~~]

(b) An inspector shall date and sign an inspection report and shall issue the report to the building owner. The inspection report shall be on forms designated by the executive director [~~commissioner~~].



(c) The executive director [~~commissioner~~] shall date and sign a certificate of compliance and shall issue the certificate to the building owner. The certificate of compliance shall state:

(1) that the elevators, escalators, and related equipment have been inspected by a certified inspector and found by the inspector to be in compliance, except for any delays or waivers granted by the executive director [~~commissioner~~] and stated in the certificate;

(2) the date of the last inspection and the due date for the next inspection;

and

(3) contact information at the department to report a violation of this subchapter.

(d) The commission by rule shall:

(1) specify what information must be contained in a certificate of compliance;

(2) describe the procedure by which a certificate of compliance is issued;

(3) require that a certificate of compliance related to an elevator be posted in a publicly visible area of the building; and

(4) determine what constitutes a "publicly visible area" under Subdivision

(3).

SECTION 11.008. Sections 754.017(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The commission [~~commissioner~~] may not by rule prohibit an ASME-QEI-1 certified inspector who is registered with the department from inspecting under this subchapter an elevator, an escalator, or related equipment. A person assisting a certified inspector is not required to be ASME-QEI-1 certified.

(c) The executive director [~~commissioner~~] may charge a [~~\$15~~] fee to certified inspectors for registering with the department.

SECTION 11.009. Sections 754.019(a), (b), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) The owner of real property on which an elevator, an escalator, or related equipment covered by this subchapter is located shall:

(1) have the elevator, escalator, or related equipment inspected by an ASME-QEI-1 certified inspector in accordance with the commission's [~~commissioner's~~] rules;

(2) obtain inspection reports [~~an inspection report~~] from the inspector evidencing that all elevators, escalators, and related equipment in a building on the real property were inspected in accordance with this subchapter and rules adopted under this subchapter;

(3) file with the executive director [~~commissioner~~] a copy of each inspection report and a [~~\$20~~] filing fee for each report, plus a fee [~~\$5~~] for each elevator, escalator, or related equipment not later than the 60th day after the date on which an inspection is made under this subchapter;

(4) display the certificate of compliance:

(A) in a publicly visible area of the building, as determined by commission rule under Section 754.016, [~~the elevator mechanical room~~] if the certificate relates to an elevator;

(B) in the escalator box if the certificate relates to an escalator; or

(C) in a place designated by the executive director [~~commissioner~~] if the certificate relates to related equipment; and

(5) display the inspection report at the locations designated in Subdivision (4) until a certificate of compliance is issued by the executive director [~~commissioner~~].

(b) When an inspection report is filed with the executive director [~~commissioner~~], the owner shall submit to the executive director [~~commissioner~~]:

(1) verification that any deficiencies in the inspector's report have been remedied or that a bona fide contract to remedy the deficiencies has been entered into; or

(2) any application for delay or waiver of an applicable standard.

(d) For the purpose of determining timely filing under Subsection (a)(3), an inspection report and fee are considered filed on the date of mailing by United States mail if properly addressed to the executive director [~~commissioner~~].

(e) If the inspection report and fee required by Subsection (a)(3) are not timely filed, the executive director [~~commissioner~~] may charge the owner of the real property on which the elevator, escalator, or related equipment is located an additional [~~\$100~~] fee for late filing.

SECTION 11.010. Section 754.023, Health and Safety Code, is amended to read as follows:

Sec. 754.023. INVESTIGATION; LICENSE PROCEEDINGS; INJUNCTION.

(a) If there is good cause for the executive director [~~commissioner~~] to believe that an elevator, an escalator, or related equipment on real property is dangerous or that an accident involving an elevator, an escalator, or related equipment occurred on the property and serious bodily injury or property damage resulted, the executive director [~~commissioner~~] may enter the property during regular business hours after notice to the owner, operator, or person in charge of the property to inspect the elevator, escalator, or related equipment or investigate the accident at no cost to the owner.

(b) The executive director [~~commissioner~~] may enter real property during regular business hours after notice to the owner, operator, or person in charge of the property to verify, at no cost to the owner, whether an inspection report or certificate of compliance has been displayed as required under Section 754.019(a).

(c) The commission [~~commissioner~~] may deny, suspend, or revoke the registration of any ASME-QEI-1 certified inspector for:

(1) obtaining registration with the executive director [~~commissioner~~] by fraud or false representation;

(2) falsifying any inspection report submitted to the executive director [~~commissioner~~]; or

(3) violating this subchapter or a rule adopted under this subchapter.

(d) The executive director [~~commissioner~~] is entitled to appropriate injunctive relief to prevent a violation or threatened violation of this subchapter or a rule adopted under this subchapter.

(e) The executive director [~~commissioner~~] may bring suit in a district court in Travis County or in the county in which the violation or threatened violation occurs. If requested, the attorney general shall represent the executive director [~~commissioner~~] in the suit.

SECTION 11.011. Subchapter B, Chapter 754, Health and Safety Code, is amended by adding Section 754.025 to read as follows:

Sec. 754.025. APPLICABILITY OF OTHER LAW. Sections 51.401 and 51.404, Occupations Code, do not apply to this subchapter.

SECTION 11.012. The following laws are repealed:

- (1) Section 754.011(5), Health and Safety Code; and
- (2) Section 754.019(f), Health and Safety Code.

SECTION 11.013. Not later than March 1, 2004, the Texas Commission of Licensing and Regulation shall adopt the rules required by Sections 754.016 and 754.019(a), Health and Safety Code, as amended by this article.

SECTION 11.014. The changes in law made by this article apply only to an inspection report or certificate of compliance issued on or after the effective date of this Act. An inspection report or certificate issued before the effective date of this Act is covered by the law in effect when the report or certificate was issued and is valid until the renewal date of that report or certificate under the terms of the former law, and the former law is continued in effect for that purpose. On renewal, an inspection report or certificate is subject to Chapter 754, Health and Safety Code, as amended by this article.

SECTION 11.015. The changes in law made by this article applying to members of the elevator advisory board do not affect the entitlement of a member serving on the board immediately before September 1, 2003, to continue to serve and function as a member of the board for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

## ARTICLE 12. INDUSTRIALIZED HOUSING AND BUILDINGS

SECTION 12.001. Section 1202.001, Occupations Code, is amended by amending Subdivision (2) and adding Subdivision (4-a) to read as follows:

- (2) "Construction site office building" means a commercial structure that is:
  - (A) not open to the public; and

(B) used as an office at a commercial site by a person constructing a building, road, bridge, utility, or other infrastructure or improvement to real property [~~"Commissioner" means the commissioner of licensing and regulation~~].

- (4-a) "Executive director" means the executive director of the department.

SECTION 12.002. Section 1202.003(a), Occupations Code, is amended to read as follows:

- (a) An industrialized building is a commercial structure that is:

- (1) constructed in one or more modules or constructed using one or more modular components built at a location other than the commercial [~~permanent~~] site; and

- (2) designed to be used as a commercial building when the module or the modular component is transported to the permanent site and erected or installed on a permanent foundation system.

SECTION 12.003. Section 1202.101, Occupations Code, is amended to read as follows:

Sec. 1202.101. RULES; ORDERS. (a) The commission [~~commissioner~~] shall adopt rules and issue orders as necessary to:

- (1) ensure compliance with the purposes of this chapter; and
- (2) provide for uniform enforcement of this chapter.

(b) The commission [~~commissioner~~] shall adopt rules as appropriate to implement the council's actions, decisions, interpretations, and instructions.

SECTION 12.004. Section 1202.102, Occupations Code, is amended to read as follows:

Sec. 1202.102. RULES PROVIDING FOR REGISTRATION AND REGULATION. The commission [~~commissioner~~] by rule shall provide for registration and regulation of manufacturers or builders of industrialized housing or buildings.

SECTION 12.005. Section 1202.104(a), Occupations Code, is amended to read as follows:

(a) The commission shall set fees, in amounts sufficient to cover the costs of the inspections described by this chapter and the administration of this chapter, for:

(1) the registration of manufacturers or builders of industrialized housing or buildings;

(2) the inspection of industrialized housing or buildings [~~at the manufacturing facility~~]; and

(3) the issuance of decals or insignia required under Section 1202.204 or 1202.206.

SECTION 12.006. Subchapter C, Chapter 1202, Occupations Code, is amended by adding Section 1202.106 to read as follows:

Sec. 1202.106. APPLICABILITY OF OTHER LAW. Sections 51.401 and 51.404 do not apply to this chapter.

SECTION 12.007. Subchapter D, Chapter 1202, Occupations Code, is amended by adding Section 1202.1535 to read as follows:

Sec. 1202.1535. EFFECT OF BUILDING CODE AMENDMENT. (a) An industrialized building that bears an approved decal or insignia indicating that the building complies with the mandatory building codes and that has not been modified or altered is considered to be in compliance with a new mandatory building code adopted by the council or an amendment to a code approved by the council under Section 1202.152 or 1202.153.

(b) The owner of an industrialized building that bears an approved decal or insignia indicating the building complies with the mandatory building codes and that is modified or altered after the date the council adopts a new mandatory building code or the council approves a building code amendment must ensure:

(1) the entire building complies with the mandatory building code or building code amendment if the cost of the modification or alteration to the building is at least 50 percent of the value of the modules or modular components used in the construction of the building; or

(2) the modified or altered portion of the building complies with the mandatory building code or building code amendment if the cost of the modification or alteration is less than 50 percent of the value of the modules or modular components.

SECTION 12.008. Section 1202.154, Occupations Code, is amended to read as follows:

Sec. 1202.154. DESIGN REVIEW. To ensure compliance with the mandatory building [~~construction~~] codes, the department or approved design review agency shall review all designs, plans, and specifications of industrialized housing and buildings in accordance with council interpretations and instructions.

SECTION 12.009. Section 1202.156(b), Occupations Code, is amended to read as follows:

(b) With reference to the standards and requirements of the mandatory building [~~construction~~] codes, the council shall determine, from an engineering performance standpoint, all questions concerning:

- (1) code equivalency; or
- (2) alternative materials or methods of construction.

SECTION 12.010. Section 1202.202, Occupations Code, is amended to read as follows:

Sec. 1202.202. DEPARTMENT [~~IN-PLANT~~] INSPECTIONS. (a) To ensure compliance with the mandatory building codes or approved designs, plans, and specifications, the department shall inspect the construction of industrialized housing and buildings [~~at the manufacturing facility~~]. The executive director [~~commissioner~~] may designate approved third-party inspectors to perform the inspections subject to the rules of the commission [~~commissioner~~].

(b) Local building officials may witness department [~~in-plant~~] inspections to enable the local officials to make recommendations on inspection procedures to the council.

SECTION 12.011. Section 1202.203, Occupations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A municipal building official shall inspect all construction involving [~~at the permanent site of~~] industrialized housing and buildings to be located in the municipality to ensure compliance with designs, plans, and specifications, including inspection of:

- (1) the construction of the foundation system; and
- (2) the erection and installation of the modules or modular components on

the [~~permanent~~] foundation.

(c) An inspection under Subsection (a) shall be conducted:

- (1) at the permanent site, if the inspection is of industrialized housing; and
- (2) at the commercial site, if the inspection is of industrialized buildings.

SECTION 12.012. Section 1202.204, Occupations Code, is amended to read as follows:

Sec. 1202.204. RULES PROVIDING FOR DECALS OR INSIGNIA. (a) The commission [~~commissioner~~] by rule shall provide for the placement of decals or insignia on each transportable modular section or modular component to indicate compliance with the mandatory building [~~construction~~] codes.

(b) The commission by rule shall exempt a construction site office building from the requirements of this section.

SECTION 12.013. Section 1202.252, Occupations Code, is amended to read as follows:

Sec. 1202.252. MUNICIPAL REGULATION OF INDUSTRIALIZED HOUSING AND BUILDINGS. (a) A municipality that regulates the on-site construction or installation of industrialized housing and buildings may:

(1) require and review, for compliance with mandatory building [~~construction~~] codes, a complete set of designs, plans, and specifications bearing the council's stamp of approval for each installation of industrialized housing or buildings in the municipality;

(2) require that all applicable local permits and licenses be obtained before construction begins on a building site;

(3) require, in accordance with commission [~~commissioner~~] rules, that all modules or modular components bear an approved decal or insignia indicating inspection by the department [~~at the manufacturing facility~~]; and

(4) establish procedures for the inspection of:

(A) the erection and installation of industrialized housing or buildings to be located in the municipality, to ensure compliance with mandatory building [~~construction~~] codes and commission [~~commissioner~~] rules; and

(B) all foundation and other on-site construction, to ensure compliance with approved designs, plans, and specifications.

(b) Procedures described by Subsection (a)(4) may require:

(1) before occupancy, a final inspection or test in accordance with mandatory building [~~construction~~] codes; and

(2) correction of any deficiency identified by the test or discovered in the final inspection.

SECTION 12.014. Section 1202.301(b), Occupations Code, is amended to read as follows:

(b) A person may not construct, sell or offer to sell, lease or offer to lease, or transport over a street or highway of this state any industrialized housing or building, or modular section or component of a modular section, in violation of this chapter or a rule of the commission or order of the commission or executive director [~~commissioner~~].

SECTION 12.015. Section 1202.302, Occupations Code, is amended to read as follows:

Sec. 1202.302. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. In addition to imposing sanctions allowed under Section 51.353, the commission [~~The commissioner~~] may deny, permanently revoke, or suspend for a definite period and specified location or geographic area a certificate of registration if the commission [~~commissioner~~] finds that the applicant or registrant:

(1) provided false information on an application or other document filed with the department;

(2) failed to pay a fee or file a report required by the department for the administration or enforcement of this chapter;

(3) engaged in a false, misleading, or deceptive act or practice as described by Subchapter E, Chapter 17, Business & Commerce Code; or

(4) violated:

(A) this chapter;

(B) a rule adopted by the commission or order issued by the commission or the executive director ~~[commissioner]~~ under this chapter; or

(C) a decision, action, or interpretation of the council.

SECTION 12.016. Section 1202.351(b), Occupations Code, is amended to read as follows:

(b) A person commits an offense if the person ~~[knowingly and wilfully]~~ violates this chapter or a published rule of the commission or order of the commission or the executive director ~~[commissioner]~~.

SECTION 12.017. The following laws are repealed:

(1) Section 1202.001(2), Occupations Code; and

(2) Section 1202.103, Occupations Code.

#### ARTICLE 13. IRRIGATORS

SECTION 13.001. Section 1903.001, Occupations Code, is amended by amending Subdivisions (1) and (3) and adding Subdivision (2-a) to read as follows:

(1) "Commission" means the Texas ~~[Natural Resource Conservation]~~ Commission of Licensing and Regulation.

(2-a) "Department" means the Texas Department of Licensing and Regulation.

(3) "Executive director" means the executive director of the department ~~[commission]~~.

SECTION 13.002. Section 1903.151(a), Occupations Code, is amended to read as follows:

(a) The Texas Irrigators Advisory Council consists of nine members appointed by the presiding officer of the commission, with the commission's approval, as follows:

(1) six members who are irrigators, residents of this state, experienced in the irrigation business, and familiar with irrigation methods and techniques; and

(2) three public members.

SECTION 13.003. Section 1903.155, Occupations Code, is amended to read as follows:

Sec. 1903.155. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, ~~[council]~~ shall appoint a council member to serve for two years as ~~[elect a]~~ presiding officer of the council ~~[by a majority vote at the first meeting each fiscal year].~~

SECTION 13.004. The following laws are repealed:

(1) Section 1903.052, Occupations Code;

(2) Section 1903.055, Occupations Code;

(3) Subchapter C, Chapter 1903, Occupations Code;

(4) Subchapter E, Chapter 1903, Occupations Code;

(5) Section 1903.255, Occupations Code;

(6) Section 1903.304, Occupations Code;

(7) Section 1903.351, Occupations Code;

- (8) Section 1903.352, Occupations Code; and
- (9) Sections 1903.353(b) and (c), Occupations Code.

SECTION 13.005. (a) On November 1, 2003:

(1) all functions and activities relating to Chapter 1903, Occupations Code, performed by the Texas Commission on Environmental Quality immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the Texas Commission on Environmental Quality that relates to Chapter 1903, Occupations Code, is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a license or other document issued by the Texas Commission on Environmental Quality that relates to Chapter 1903, Occupations Code, is considered a license or other document issued by the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(4) a reference in law or an administrative rule to the Texas Commission on Environmental Quality that relates to Chapter 1903, Occupations Code, means the Texas Department of Licensing and Regulation;

(5) a complaint, investigation, or other proceeding before the Texas Commission on Environmental Quality that is related to Chapter 1903, Occupations Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas Commission on Environmental Quality in an action or proceeding to which the Texas Commission on Environmental Quality is a party;

(6) all money, contracts, leases, property, and obligations of the Texas Commission on Environmental Quality related to Chapter 1903, Occupations Code, are transferred to the Texas Department of Licensing and Regulation;

(7) all property in the custody of the Texas Commission on Environmental Quality related to Chapter 1903, Occupations Code, is transferred to the Texas Department of Licensing and Regulation; and

(8) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Commission on Environmental Quality related to Chapter 1903, Occupations Code, is transferred to the Texas Department of Licensing and Regulation.

(b) Before November 1, 2003, the Texas Commission on Environmental Quality may agree with the Texas Department of Licensing and Regulation to transfer any property of the Texas Commission on Environmental Quality to the Texas Department of Licensing and Regulation to implement the transfer required by this article.

(c) In the period beginning on the effective date of this Act and ending on November 1, 2003, the Texas Commission on Environmental Quality shall continue to perform functions and activities under Chapter 1903, Occupations Code, as if that chapter had not been amended by this Act, and the former law is continued in effect for that purpose.

#### ARTICLE 14. PERSONNEL EMPLOYMENT SERVICES

SECTION 14.001. Section 2501.001, Occupations Code, is amended by amending Subdivision (2) and adding Subdivisions (3-a) and (4-a) to read as follows:



(2) "Commission" [~~"Commissioner"~~] means the Texas Commission of Licensing and Regulation [~~commissioner of licensing and regulation~~].

(3-a) "Department" means the Texas Department of Licensing and Regulation.

(4-a) "Executive director" means the executive director of the department.

SECTION 14.002. Section 2501.152, Occupations Code, is amended to read as follows:

Sec. 2501.152. COMPLAINT AND INVESTIGATION. (a) A person [~~by sworn affidavit~~] may file with the executive director [~~commissioner~~] a complaint alleging a violation of Section 2501.102.

(b) On receipt of a complaint, the executive director [~~commissioner~~] shall investigate the alleged violation and may:

- (1) inspect any records relevant to the complaint; and
- (2) subpoena those records and any necessary witnesses.

SECTION 14.003. Sections 2501.153(a) and (c), Occupations Code, are amended to read as follows:

(a) If the executive director [~~commissioner~~] determines as a result of an investigation that a violation of Section 2501.102 may have occurred, the commission [~~commissioner~~] shall hold a hearing [~~not later than the 45th day after the date the complaint was filed under Section 2501.152~~].

(c) The commission [~~commissioner~~] shall render a decision on the alleged violation [~~not later than the eighth day~~] after [~~the date~~] the hearing is concluded.

SECTION 14.004. Section 2501.154, Occupations Code, is amended to read as follows:

Sec. 2501.154. SANCTIONS. (a) If, after a hearing, the commission [~~commissioner~~] determines that a personnel service has violated Section 2501.102, the commission [~~commissioner~~] may, as appropriate:

- (1) issue a warning to the personnel service; or
- (2) suspend or revoke the certificate of authority issued to the personnel service.

(b) If, after a hearing, the commission [~~commissioner~~] determines that a personnel service has violated Section 2501.102, the commission [~~commissioner~~] may award the complainant an amount equal to the amount of the fee charged by the personnel service.

SECTION 14.005. Sections 2501.058 and 2501.155, Occupations Code, are repealed.

## ARTICLE 15. PROPERTY TAX CONSULTANTS

SECTION 15.001. Section 1152.001, Occupations Code, is amended by adding Subdivision (3-a) to read as follows:

(3-a) "Executive director" means the executive director of the department.

SECTION 15.002. The heading to Subchapter B, Chapter 1152, Occupations Code, is amended to read as follows:

### SUBCHAPTER B. DUTIES OF COMMISSION, EXECUTIVE DIRECTOR, [~~COMMISSIONER~~] AND DEPARTMENT

SECTION 15.003. Section 1152.051, Occupations Code, is amended to read as follows:

Sec. 1152.051. STANDARDS OF CONDUCT FOR REGISTRANTS. The commission [~~commissioner~~] by rule shall establish standards of practice, conduct, and ethics for registrants.

SECTION 15.004. Sections 1152.102(a) and (b), Occupations Code, are amended to read as follows:

(a) The council is composed of six members appointed by the presiding officer of the commission, with the commission's approval.

(b) The presiding officer of the commission may appoint not more than two members who are qualified for an exemption under Section 1152.002(a)(3).

SECTION 15.005. Section 1152.104(b), Occupations Code, is amended to read as follows:

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, [~~commissioner~~] shall appoint to fill the unexpired part of the term a replacement who meets the qualifications of the vacated office.

SECTION 15.006. Section 1152.105, Occupations Code, is amended to read as follows:

Sec. 1152.105. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, [~~Before March 1 of each year, the council~~] shall appoint [~~elect~~] a member of the council to serve as presiding officer of the council for two years [~~until the last day of February of the following year~~].

SECTION 15.007. Section 1152.108, Occupations Code, is amended to read as follows:

Sec. 1152.108. COUNCIL POWERS. The council shall:

(1) recommend to the commission [~~commissioner~~] standards of practice, conduct, and ethics for registrants to be adopted under this chapter;

(2) recommend to the commission amounts for the fees it may set under this chapter;

(3) recommend to the commission [~~commissioner~~] contents for the senior property tax consultant registration examination and standards of acceptable performance;

(4) assist and advise the commission [~~commissioner~~] in recognizing continuing education programs and educational courses for registrants; and

(5) advise the commission [~~commissioner~~] in establishing educational requirements for initial applicants.

SECTION 15.008. Section 1152.155(a), Occupations Code, is amended to read as follows:

(a) To be eligible for registration, an applicant must:

(1) be at least 18 years of age;

(2) hold a high school diploma or its equivalent;

(3) pay the fees required by the commission;

(4) have a place of business in this state or designate a resident of this state as the applicant's agent for service of process; and

(5) meet any additional qualifications required by this chapter or by the commission [~~commissioner~~] under this chapter or Chapter 51.

SECTION 15.009. Section 1152.160, Occupations Code, is amended to read as follows:

Sec. 1152.160. SENIOR PROPERTY TAX CONSULTANT REGISTRATION EXAMINATION. (a) The executive director [~~commissioner~~] shall:

(1) adopt an examination for registration as a senior property tax consultant; and

(2) establish the standards for passing the examination.

(b) The department shall offer the examination at times and places designated by the executive director [~~commissioner~~].

(c) To be eligible to take the examination, an applicant must pay to the department an examination fee. [~~The commissioner by rule may establish conditions for refunding the examination fee to an applicant who does not take the examination.~~]

(d) The examination must:

(1) test the applicant's knowledge of:

(A) property taxation;

(B) the property tax system;

(C) property tax administration;

(D) ethical standards; and

(E) general principles of appraisal, accounting, and law as they relate to property tax consulting services; and

(2) be graded according to rules adopted by the commission [~~commissioner~~].

SECTION 15.010. Section 1152.201, Occupations Code, is amended to read as follows:

Sec. 1152.201. TERM OF CERTIFICATE OF REGISTRATION. Except as otherwise provided by the commission, a certificate of registration expires on the first [~~second~~] anniversary of the date of issuance.

SECTION 15.011. Section 1152.202(a), Occupations Code, is amended to read as follows:

(a) The executive director [~~commissioner~~] shall issue to an eligible registrant a certificate of renewal of registration on the timely receipt of the required renewal fee. [~~The certificate expires on the second anniversary of the date of issuance.~~]

SECTION 15.012. Section 1152.204, Occupations Code, is amended to read as follows:

Sec. 1152.204. RECOGNITION OF EDUCATIONAL PROGRAMS AND COURSES. (a) The commission [~~commissioner~~] by rule shall recognize appropriate continuing education programs for registrants.

(b) The commission [~~commissioner~~] shall recognize a continuing education course, including a course on the legal issues and law related to property tax consulting services, that is:

(1) approved by the Texas Real Estate Commission or the Texas Appraiser Licensing and Certification Board; and

(2) completed by a registrant who also holds:

(A) an active real estate broker license or an active real estate salesperson license under Chapter 1101; or

(B) an active real estate appraiser license or certificate under Chapter 1103.

(c) The commission [~~commissioner~~] may recognize an educational program or course:

(1) related to property tax consulting services; and

(2) offered or sponsored by a public provider or a recognized private provider, including:

(A) the comptroller;

(B) the State Bar of Texas;

(C) the Texas Real Estate Commission;

(D) an institution of higher education that meets program and accreditation standards comparable to those for public institutions of higher education as determined by the Texas Higher Education Coordinating Board; or

(E) a nonprofit and voluntary trade association, institute, or organization:

(i) whose membership consists primarily of persons who represent property owners in property tax or transactional tax matters;

(ii) that has written experience and examination requirements for membership or for granting professional designation to its members; and

(iii) that subscribes to a code of professional conduct or ethics.

(d) The commission [~~commissioner~~] may recognize a private provider of an educational program or course if the provider:

(1) applies to the department on a printed form prescribed by the executive director [~~commissioner~~]; and

(2) pays in the amounts set by the commission:

(A) a nonrefundable application fee; and

(B) an educational provider's fee.

(e) The department shall refund the educational provider's fee if the commission [~~commissioner~~] does not recognize the provider's educational program or course.

SECTION 15.013. Section 1152.251, Occupations Code, is amended to read as follows:

Sec. 1152.251. DISCIPLINARY POWERS OF COMMISSION [~~COMMISSIONER~~]. After a hearing, the commission [~~commissioner~~] may deny a certificate of registration and may impose an administrative sanction or penalty and seek injunctive relief and a civil penalty against a registrant as provided by Chapter 51 for:

(1) a violation of this chapter or a rule applicable to the registrant adopted by the commission [~~commissioner~~] under this chapter;

(2) gross incompetency in the performance of property tax consulting services;

(3) dishonesty or fraud committed while performing property tax consulting services; or

(4) a violation of the standards of ethics adopted by the commission [~~commissioner~~].

SECTION 15.014. The following laws are repealed:

(1) Section 1152.001(2), Occupations Code;

- (2) Section 1152.161, Occupations Code;
- (3) Section 1152.163, Occupations Code;
- (4) Sections 1152.202(b) and (c), Occupations Code; and
- (5) Effective March 1, 2004, Section 1152.203, Occupations Code.

SECTION 15.015. The change in law made by this article to Section 1152.201, Occupations Code, applies only to a certificate of registration issued or renewed on or after the effective date of this Act. A certificate of registration issued or renewed before the effective date of this Act is governed by that section as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 15.016. The changes in law made by this article applying to members of the Property Tax Consultants Advisory Council do not affect the entitlement of a member serving on the council immediately before September 1, 2003, to continue to serve and function as a member of the council for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

#### ARTICLE 16. SERVICE CONTRACT PROVIDERS

SECTION 16.001. Section 1304.002, Occupations Code, is amended by adding Subdivision (5-a) to read as follows:

(5-a) "Executive director" means the executive director of the department.

SECTION 16.002. Section 1304.051, Occupations Code, is amended to read as follows:

Sec. 1304.051. SERVICE CONTRACT PROVIDERS ADVISORY BOARD.

(a) The Service Contract Providers Advisory Board consists of six members appointed by the presiding officer of the commission, with the commission's approval, [commissioner] and one ex officio nonvoting member.

(b) Of the appointed members:

(1) two must be officers, directors, or employees of a provider of service contracts that have been approved by the executive director [commissioner];

(2) two must be officers, directors, or employees of a retail outlet or other entity in this state that provides to consumers service contracts approved by the executive director [commissioner] for sale to consumers;

(3) one must be an officer, director, or employee of an entity authorized by the Texas Department of Insurance to sell reimbursement insurance policies; and

(4) one must be a resident of this state who holds, as a consumer, a service contract that is in force in this state on the date of the member's appointment and was issued by a provider registered under this chapter.

(c) The executive director [commissioner] or the executive director's [commissioner's] designee serves as an ex officio nonvoting member of the advisory board.

SECTION 16.003. Section 1304.052(a), Occupations Code, is amended to read as follows:

(a) The advisory board shall advise the commission [commissioner] in adopting rules and in administering and enforcing this chapter.

SECTION 16.004. Section 1304.053(b), Occupations Code, is amended to read as follows:

(b) If a vacancy occurs during an appointed member's term, the presiding officer of the commission [~~commissioner~~] shall fill the vacancy for the remainder of the unexpired term with a person who represents the same interests as the predecessor.

SECTION 16.005. Section 1304.054, Occupations Code, is amended to read as follows:

Sec. 1304.054. PRESIDING OFFICER. The presiding officer of the commission [~~commissioner~~] shall designate one member of the advisory board to serve as presiding officer of the board for two years.

SECTION 16.006. Sections 1304.103(a) and (b), Occupations Code, are amended to read as follows:

(a) The executive director [~~commissioner~~] shall develop a tiered schedule of annual registration fees under which a provider's registration fee is based on the number of service contracts the provider sold in this state during the preceding 12-month period.

(b) The commission shall set the amounts of the fees to cover the costs of administering this chapter. [~~The maximum fee may not exceed \$2,000.~~]

SECTION 16.007. Subchapter C, Chapter 1304, Occupations Code, is amended by adding Section 1304.105 to read as follows:

Sec. 1304.105. RENEWAL. The commission shall adopt rules regarding the renewal of a registration issued under this chapter.

SECTION 16.008. Sections 1304.151(a)-(c) and (e), Occupations Code, are amended to read as follows:

(a) To ensure the faithful performance of a provider's obligations to its service contract holders, each provider must:

(1) insure the provider's service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state or by a surplus lines insurer eligible to place coverage in this state under Chapter 981 [~~Article 1.14-2~~], Insurance Code;

(2) maintain a funded reserve account covering the provider's obligations under its service contracts that are issued and outstanding in this state and place in trust with the executive director [~~commissioner~~] a financial security deposit consisting of:

(A) a surety bond issued by an authorized surety;

(B) securities of the type eligible for deposit by an authorized insurer in this state;

(C) a statutory deposit of cash or cash equivalents;

(D) a letter of credit issued by a qualified financial institution; or

(E) another form of security prescribed by rules adopted by the commission [~~commissioner~~]; or

(3) maintain, or have a parent company that maintains, a net worth or stockholders' equity of at least \$100 million.

(b) If the provider ensures its obligations under Subsection (a)(2), the amount maintained in the reserve account may not be less than an amount equal to 40 percent of the gross consideration the provider received from consumers from the sale of all

service contracts issued and outstanding in this state, minus any claims paid. The executive director [~~commissioner~~] may review and examine the reserve account. The amount of the security deposit may not be less than the greater of:

(1) \$25,000; or

(2) an amount equal to five percent of the gross consideration the provider received from consumers from the sale of all service contracts issued and outstanding in this state, minus any claims paid.

(c) If the provider ensures its obligations under Subsection (a)(3), the provider must give to the executive director [~~commissioner~~] on request:

(1) a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission within the preceding calendar year; or

(2) if the provider or the provider's parent company does not file with the Securities and Exchange Commission, a copy of the provider's or the provider's parent company's audited financial statements showing a net worth of the provider or its parent company of at least \$100 million.

(e) The executive director [~~commissioner~~] may not require a provider to meet any additional financial security requirement.

SECTION 16.009. Section 1304.201(a), Occupations Code, is amended to read as follows:

(a) On a finding that a ground for disciplinary action exists under this chapter, the commission [~~commissioner~~] may impose an administrative sanction, including an administrative penalty, as provided by Chapter 51.

SECTION 16.010. The following laws are repealed:

(1) Section 1304.002(3), Occupations Code; and

(2) Section 1304.201(b), Occupations Code.

SECTION 16.011. The changes in law made by this article applying to members of the Service Contract Providers Advisory Board do not affect the entitlement of a member serving on the board immediately before September 1, 2003, to continue to serve and function as a member of the board for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

## ARTICLE 17. STAFF LEASING SERVICES

SECTION 17.001. Section 91.001, Labor Code, is amended by adding Subdivision (8-a) to read as follows:

(8-a) "Executive director" means the executive director of the department.

SECTION 17.002. Sections 91.002(a) and (b), Labor Code, are amended to read as follows:

(a) The commission [~~commissioner~~] shall adopt rules as necessary to administer this chapter.

(b) Each person who offers staff leasing services is subject to this chapter and the rules adopted by the commission [~~commissioner~~].

SECTION 17.003. Subchapter A, Chapter 91, Labor Code, is amended by adding Section 91.008 to read as follows:

Sec. 91.008. APPLICABILITY OF CONTINUING EDUCATION LAW. Section 51.405, Occupations Code, does not apply to this chapter.

SECTION 17.004. Section 91.016(b), Labor Code, is amended to read as follows:

(b) A license issued or renewed by the department under this chapter is valid for one year ~~[two years]~~ from the date of the issuance or renewal. The department shall renew a license on receipt of a complete renewal application form and payment of the license renewal fee.

SECTION 17.005. Section 91.017(a), Labor Code, is amended to read as follows:

(a) Each applicant for an original or renewal staff leasing services company license shall pay to the department before the issuance of the license or license renewal a fee set by the commission by rule ~~[in an amount not to exceed \$6,000 for the two-year license period]~~.

SECTION 17.006. Sections 91.018(b) and (d), Labor Code, are amended to read as follows:

(b) A license holder may change the license holder's licensed name at any time by notifying the department and paying a fee for each change of name. The commission by rule shall set the fee for a name change ~~[in an amount not to exceed \$50]~~. A license holder may change the license holder's name on renewal of the license without the payment of the name change fee.

(d) A license holder may amend the name specified in its license to add a trade name, trademark, service mark, or parent company name. An amendment made under this subsection must comply with the requirements imposed under Subsection (a). The department may charge a fee ~~[not to exceed \$50]~~ for processing of such an amendment.

SECTION 17.007. Section 91.019(a), Labor Code, is amended to read as follows:

(a) The commission ~~[commissioner]~~ by rule shall provide for the issuance of a limited license to a person who seeks to offer limited staff leasing services in this state.

SECTION 17.008. Section 91.020, Labor Code, is amended to read as follows:

Sec. 91.020. GROUNDS FOR DISCIPLINARY ACTION. ~~[(a)]~~ The department may take disciplinary action against a license holder on any of the following grounds:

(1) ~~[being convicted or having a controlling person of the license holder who is convicted of:~~

~~[(A) bribery, fraud, or intentional or material misrepresentation in obtaining, attempting to obtain, or renewing a license;~~

~~[(B) a crime that relates to the operation of a staff leasing service or the ability of the license holder or any controlling person of the license holder to operate a staff leasing service;~~

~~[(C) a crime that relates to the classification, misclassification, or under reporting of employees under Subtitle A, Title 5;~~

~~[(D) a crime that relates to the establishment or maintenance of a self-insurance program, whether health insurance, workers' compensation insurance, or other insurance; or~~



~~(E) a crime that relates to fraud, deceit, or misconduct in the operation of a staff leasing service;~~

~~(2)~~ engaging in staff leasing services or offering to engage in the provision of staff leasing services without a license;

~~(2)~~ ~~(3)~~ transferring or attempting to transfer a license issued under this chapter;

~~(3)~~ ~~(4)~~ violating this chapter or any order or rule issued by the executive director ~~[department]~~ or commission ~~[commissioner]~~ under this chapter;

~~(4)~~ ~~(5)~~ failing after the 31st day after the date on which a felony conviction of a controlling person is final to notify the department in writing of the conviction;

~~(5)~~ ~~(6)~~ failing to cooperate with an investigation, examination, or audit of the license holder's records conducted by the license holder's insurance company or the insurance company's designee, as allowed by the insurance contract or as authorized by law by the Texas Department of Insurance;

~~(6)~~ ~~(7)~~ failing after the 31st day after the effective date of a change in ownership, principal business address, or the address of accounts and records to notify the department and the Texas Department of Insurance of the change;

~~(7)~~ ~~(8)~~ failing to correct any tax filings or payment deficiencies within a reasonable time as determined by the executive director ~~[commissioner]~~;

~~(8)~~ ~~(9)~~ refusing, after reasonable notice, to meet reasonable health and safety requirements within the license holder's control and made known to the license holder by a federal or state agency;

~~(9)~~ ~~(10)~~ being delinquent in the payment of the license holder's insurance premiums other than those subject to a legitimate dispute;

~~(10)~~ ~~(11)~~ being delinquent in the payment of any employee benefit plan premiums or contributions other than those subject to a legitimate dispute;

~~(11)~~ ~~(12)~~ knowingly making a material misrepresentation to an insurance company or to the department or other governmental agency;

~~(12)~~ ~~(13)~~ failing to maintain the net worth requirements required under Section 91.014; or

~~(13)~~ ~~(14)~~ using staff leasing services to avert or avoid an existing collective bargaining agreement.

~~[(b) For purposes of this section, "conviction" includes a plea of nolo contendere or a finding of guilt, regardless of adjudication.]~~

SECTION 17.009. Section 91.041(c), Labor Code, is amended to read as follows:

(c) The commission ~~[commissioner]~~ by rule may require a license holder to file other reports that are reasonably necessary for the implementation of this chapter.

SECTION 17.010. The following laws are repealed:

(1) Section 91.001(5), Labor Code; and

(2) Section 91.021, Labor Code.

SECTION 17.011. The change in law made by this article to Section 91.016(b), Labor Code, applies only to a license issued or renewed on or after January 1, 2004. A license issued or renewed before January 1, 2004, is governed by that section as it existed immediately before that date, and that law is continued in effect for that purpose.

#### ARTICLE 18. TALENT AGENCIES

SECTION 18.001. Section 2105.001, Occupations Code, is amended by amending Subdivision (2) and adding Subdivision (3-a) to read as follows:

(2) "Commission" [~~"Commissioner"~~] means the Texas Commission of Licensing and Regulation [~~commissioner of licensing and regulation~~].

(3-a) "Executive director" means the executive director of the department.

SECTION 18.002. Section 2105.002, Occupations Code, is amended to read as follows:

Sec. 2105.002. POWERS AND DUTIES [~~OF DEPARTMENT~~]. (a) The executive director [~~department~~] shall[~~:~~

~~(1)~~ [~~1~~] prescribe application forms for original and renewal certificates of registration.

(b) The commission shall[:~~;~~]

~~(1)~~ [~~2~~] set application and registration fees in amounts that are reasonable and necessary to defray the costs of administering this chapter; and

~~(2)~~ [~~3~~] adopt rules as necessary to implement this chapter.

(c) [~~4~~] The commission [~~department~~] may[~~:~~

~~(1)~~ [~~1~~] adopt rules as necessary to administer the registration program created under this chapter.

(d) The department may[~~;~~ ~~and~~

~~(2)~~ [~~2~~] take other action as necessary to enforce this chapter.

SECTION 18.003. Subchapter A, Chapter 2105, Occupations Code, is amended by adding Section 2105.003 to read as follows:

Sec. 2105.003. APPLICABILITY OF OTHER LAW. Section 51.405 does not apply to this chapter.

SECTION 18.004. Section 2105.053, Occupations Code, is amended to read as follows:

Sec. 2105.053. REGISTRATION FEE. The department may charge a talent agency a reasonable fee [~~not to exceed \$100~~] to cover the cost of filing a registration statement or an update of a registration statement.

SECTION 18.005. Section 2105.104, Occupations Code, is amended to read as follows:

Sec. 2105.104. AGENCY RECORDS. A certificate holder shall maintain records relating to the operation of the talent agency as required by commission [~~department~~] rule.

SECTION 18.006. Section 2105.105(b), Occupations Code, is amended to read as follows:

(b) Funds deposited under this section may be disbursed only as prescribed by commission [~~department~~] rule.

SECTION 18.007. The following laws are repealed:

(1) Sections 2105.055(b) and (c), Occupations Code;

- (2) Sections 2105.056(a), (b), and (c), Occupations Code; and
- (3) Section 2105.252, Occupations Code.

ARTICLE 19. TEMPORARY COMMON WORKER EMPLOYERS

SECTION 19.001. Section 92.002, Labor Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Executive director" means the executive director of the department.

SECTION 19.002. Subchapter A, Chapter 92, Labor Code, is amended by adding Section 92.004 to read as follows:

Sec. 92.004. APPLICABILITY OF OTHER LAW. Section 51.405, Occupations Code, does not apply to this chapter.

SECTION 19.003. Section 92.022(c), Labor Code, is amended to read as follows:

(c) Information received by the commission ~~[commissioner]~~ or department under this section is privileged and confidential and is for the exclusive use of the commission ~~[commissioner]~~ or department. The information may not be disclosed to any other person except on the entry of a court order requiring disclosure or on the written consent of a person under investigation who is the subject of the records.

SECTION 19.004. The following laws are repealed:

- (1) Section 92.002(2), Labor Code; and
- (2) Sections 92.015(b) and (c), Labor Code.

ARTICLE 20. TRANSPORTATION SERVICE PROVIDERS

SECTION 20.001. Section 2401.001(2), Occupations Code, is amended to read as follows:

(2) "Department" means the ~~[Texas]~~ Department of Public Safety Licensing and Regulation.

SECTION 20.002. The heading to Subchapter B, Chapter 2401, Occupations Code, is amended to read as follows:

SUBCHAPTER B. POWERS AND DUTIES ~~[OF COMMISSION, COMMISSIONER, AND DEPARTMENT]~~

SECTION 20.003. Section 2401.052, Occupations Code, is amended to read as follows:

Sec. 2401.052. EXAMINATION OR AUDIT. (a) To administer this chapter, the department may:

- (1) examine:
  - (A) a record maintained under Section 2401.152; or
  - (B) a record or object the department determines is necessary to conduct a complete examination; or

(2) question under oath any person who~~±~~ ~~[(A)]~~ is associated with the business of a transportation service provider~~±; or~~ ~~[(B)] claims the person was negatively affected by a violation of this chapter committed by a transportation service provider~~.

(b) The department may periodically audit the business records of a transportation service provider ~~[registered under this chapter]~~.

SECTION 20.004. Section 2401.251, Occupations Code, is amended to read as follows:

Sec. 2401.251. CIVIL PENALTY. A transportation service provider who knowingly violates this chapter [~~or a rule adopted under this chapter~~] is liable for a civil penalty of not less than \$100 or more than \$500 for each violation.

SECTION 20.005. Section 2401.253, Occupations Code, is amended to read as follows:

Sec. 2401.253. AUTHORITY TO INVESTIGATE AND FILE COMPLAINT.

(a) The department [~~commissioner, with the assistance of the Texas Department of Public Safety,~~] may investigate a violation of this chapter [~~or a rule adopted under this chapter~~].

(b) Any [~~The commissioner or any~~] law enforcement agency may file a complaint with:

(1) the district attorney of Travis County; or

(2) the prosecuting attorney of the county in which a violation is alleged to have occurred.

SECTION 20.006. The following laws are repealed:

(1) Section 2401.001(1), Occupations Code;

(2) Section 2401.051, Occupations Code;

(3) Section 2401.053, Occupations Code;

(4) Section 2401.054, Occupations Code;

(5) Subchapter C, Chapter 2401, Occupations Code;

(6) Section 2401.151, Occupations Code; and

(7) Subchapter E, Chapter 2401, Occupations Code.

SECTION 20.007. (a) On November 1, 2003:

(1) all functions and activities relating to Chapter 2401, Occupations Code, performed by the Texas Department of Licensing and Regulation immediately before that date are transferred to the Department of Public Safety;

(2) a reference in law or an administrative rule to the Texas Department of Licensing and Regulation that relates to Chapter 2401, Occupations Code, means the Department of Public Safety;

(3) a complaint, investigation, or other proceeding before the Texas Department of Licensing and Regulation that is related to Chapter 2401, Occupations Code, is transferred without change in status to the Department of Public Safety, and the Department of Public Safety assumes, as appropriate and without a change in status, the position of the Texas Department of Licensing and Regulation in an action or proceeding to which the Texas Department of Licensing and Regulation is a party;

(4) all money, contracts, leases, property, and obligations of the Texas Department of Licensing and Regulation related to Chapter 2401, Occupations Code, are transferred to the Department of Public Safety;

(5) all property in the custody of the Texas Department of Licensing and Regulation related to Chapter 2401, Occupations Code, is transferred to the Department of Public Safety; and

(6) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Department of Licensing and Regulation related to Chapter 2401, Occupations Code, is transferred to the Department of Public Safety.

(b) An offense or other violation related to Chapter 2401, Occupations Code, committed before the effective date of this Act is covered by the law as it existed on the date on which the offense or other violation was committed, and the former law is continued in effect for that purpose.

(c) Before November 1, 2003, the Texas Department of Licensing and Regulation may agree with the Department of Public Safety to transfer any property of the Texas Department of Licensing and Regulation to the Department of Public Safety to implement the transfer required by this article.

(d) In the period beginning on the effective date of this Act and ending on November 1, 2003, the Texas Department of Licensing and Regulation shall continue to perform functions and activities under Chapter 2401, Occupations Code, as if that chapter had not been amended by this Act, and the former law is continued in effect for that purpose.

#### ARTICLE 21. UNDERGROUND STORAGE TANK OPERATORS

SECTION 21.001. Section 26.451, Water Code, is amended by adding Subdivision (3-a) to read as follows:

(3-a) "Department" means the Texas Department of Licensing and Regulation.

SECTION 21.002. Sections 26.452(a) and (b), Water Code, are amended to read as follows:

(a) A person who offers to undertake, represents that the person is able to undertake, or undertakes to install, repair, or remove an underground storage tank must hold a registration issued by the department [~~commission~~] under Chapter 51, Occupations Code [~~37~~]. If the person is a partnership or joint venture, it need not register in its own name if each partner or joint venture is registered.

(b) An underground storage tank contractor must have an on-site supervisor who is licensed by the department [~~commission~~] under Chapter 51, Occupations Code, [~~37~~] at the site at all times during the critical junctures of the installation, repair, or removal.

SECTION 21.003. Section 26.456(a), Water Code, is amended to read as follows:

(a) A person supervising the installation, repair, or removal of an underground storage tank must hold a license issued by the department [~~commission~~] under Chapter 51, Occupations Code [~~37~~].

SECTION 21.004. (a) On November 1, 2003:

(1) all functions and activities relating to Subchapter K, Chapter 26, Water Code, performed by the Texas Commission on Environmental Quality immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the Texas Commission on Environmental Quality that relates to Subchapter K, Chapter 26, Water Code, is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a license or other document issued by the Texas Commission on Environmental Quality that relates to Subchapter K, Chapter 26, Water Code, is considered a license or other document issued by the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(4) a reference in law or an administrative rule to the Texas Commission on Environmental Quality that relates to Subchapter K, Chapter 26, Water Code, means the Texas Department of Licensing and Regulation;

(5) a complaint, investigation, or other proceeding before the Texas Commission on Environmental Quality that is related to Subchapter K, Chapter 26, Water Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas Commission on Environmental Quality in an action or proceeding to which the Texas Commission on Environmental Quality is a party;

(6) all money, contracts, leases, property, and obligations of the Texas Commission on Environmental Quality related to Subchapter K, Chapter 26, Water Code, are transferred to the Texas Department of Licensing and Regulation;

(7) all property in the custody of the Texas Commission on Environmental Quality related to Subchapter K, Chapter 26, Water Code, is transferred to the Texas Department of Licensing and Regulation; and

(8) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Commission on Environmental Quality related to Subchapter K, Chapter 26, Water Code, is transferred to the Texas Department of Licensing and Regulation.

(b) Before November 1, 2003, the Texas Commission on Environmental Quality may agree with the Texas Department of Licensing and Regulation to transfer any property of the Texas Commission on Environmental Quality to the Texas Department of Licensing and Regulation to implement the transfer required by this article.

(c) In the period beginning on the effective date of this Act and ending on November 1, 2003, the Texas Commission on Environmental Quality shall continue to perform functions and activities under Subchapter K, Chapter 26, Water Code, as if that subchapter had not been amended by this Act, and the former law is continued in effect for that purpose.

#### ARTICLE 22. VEHICLE PROTECTION PRODUCT WARRANTORS

SECTION 22.001. Section 2, Article 9035, Revised Statutes, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Executive director" means the executive director of the department.

SECTION 22.002. Article 9035, Revised Statutes, is amended by adding Section 3A to read as follows:

Sec. 3A. APPLICABILITY OF OTHER LAW. Section 51.405, Occupations Code, does not apply to this article.

SECTION 22.003. Section 4, Article 9035, Revised Statutes, is amended to read as follows:

Sec. 4. POWERS AND DUTIES [~~OF COMMISSIONER~~]. (a) The commissioner [~~commissioner~~] may adopt rules as necessary to implement this article.

(b) The executive director [~~commissioner~~] may conduct investigations of warrantors or other persons as reasonably necessary to enforce this article and to protect consumers in this state. On request of the executive director [~~commissioner~~], a warrantor shall make the warrantor's records maintained under Section 10 of this

article regarding vehicle protection products sold by the warrantor available to the department as necessary to enable the department to reasonably determine compliance with this article.

SECTION 22.004. Sections 5(a)-(g), Article 9035, Revised Statutes, are amended to read as follows:

(a) The Vehicle Protection Product Warrantor Advisory Board is an advisory body to the commission [~~department~~]. The advisory board shall advise:

[~~(1)~~] the commission [~~commissioner~~] on adopting rules, ~~and~~ enforcing and administering this article, ~~and~~ and

[~~(2)~~ the commission on] setting fees.

(b) The advisory board consists of six members appointed by the presiding officer of the commission [~~commissioner~~] as follows:

(1) two members who are officers, directors, or employees of a warrantor who has been approved or expects to be approved by the department;

(2) two members who are officers, directors, or employees of a retail outlet or other entity located in this state that sells vehicle protection products and is approved or expected to be approved by the department; and

(3) two members who are residents of this state and, at the time of appointment, are consumers of vehicle protection products issued by warrantors registered or expected to be registered under this article.

(c) Members of the advisory board serve staggered six-year terms, with the terms of two members expiring on February 1 of each odd-numbered year. [~~The commissioner shall appoint the initial six board members to terms of six years or less in order to create staggered terms for the subsequent members of the advisory board.~~]

(d) The presiding officer of the commission [~~commissioner~~] shall designate one member of the advisory board to serve as presiding officer of the board for two years.

(e) The executive director [~~commissioner~~] or the executive director's [~~commissioner's~~] designee serves as an ex officio nonvoting member of the advisory board.

(f) The presiding officer of the commission [~~commissioner~~] shall fill any vacancy on the advisory board by appointing an individual who meets the qualifications for the vacant advisory board position to serve the remainder of the unexpired term.

(g) The advisory board shall meet at least every six months and may meet at other times at the call of the presiding officer of the board or the presiding officer of the commission [~~commissioner~~]. The advisory board shall meet at a location in this state designated by the [~~advisory~~] board.

SECTION 22.005. Sections 6(c) and (d), Article 9035, Revised Statutes, are amended to read as follows:

(c) Each registered warrantor shall pay an annual registration fee [~~not to exceed \$2,500~~] as set by the commission to cover the costs of administering this article. The department shall develop a tiered fee structure under which registration fees are assessed on warrantors based on the number of vehicle protection products sold within this state in the 12 months preceding the date of registration. The information submitted to the department under this section regarding the number of vehicle protection products sold by a warrantor may only be used by the department in

determining the tiered fee structure. Information concerning the number of vehicle protection products sold by a warrantor submitted under this section is a trade secret and subject to Section 552.110, Government Code.

(d) The commission [~~commissioner~~] shall adopt rules providing for the renewal of a warrantor's registration.

SECTION 22.006. Section 10(e), Article 9035, Revised Statutes, is amended to read as follows:

(e) The commission [~~commissioner~~] shall adopt rules governing how a warrantor shall protect nonpublic personal information provided by a consumer to the warrantor.

SECTION 22.007. Sections 16(a) and (c), Article 9035, Revised Statutes, are amended to read as follows:

(a) The executive director [~~commissioner~~] may bring an action against a warrantor for injunctive relief under Section 51.352, Occupations Code, for a threatened or existing violation of this article or of the [~~commissioner's~~] orders or rules adopted under this article.

(c) For purposes of this section [~~and Section 15 of this article~~], violations are of a similar nature if the violations consist of the same or a similar course of conduct, action, or practice, regardless of the number of times the conduct, act, or practice determined to be a violation of this article occurred.

SECTION 22.008. The following laws are repealed:

- (1) Section 2(2), Article 9035, Revised Statutes; and
- (2) Section 15, Article 9035, Revised Statutes.

SECTION 22.009. The changes in law made by this article applying to members of the Vehicle Protection Product Warrantor Advisory Board do not affect the entitlement of a member serving on the board immediately before September 1, 2003, to continue to serve and function as a member of the board for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

## ARTICLE 23. WATER TREATMENT SPECIALISTS

SECTION 23.001. Section 341.034(e), Health and Safety Code, is amended to read as follows:

(e) Unless the person is licensed by the Texas State Board of Plumbing Examiners, a person must hold a license issued by the Texas Department of Licensing and Regulation [~~commission~~] under Chapter 51, Occupations [~~37, Water~~] Code, if, under a contract, the person:

- (1) installs, exchanges, connects, maintains, or services potable water treatment equipment and appliances in public or private water systems; or
- (2) analyzes water to determine how to treat influent or effluent water, alter or purify water, or add or remove a mineral, chemical, or bacterial content or substance as part of the complete installation, exchange, connection, maintenance, or service of potable water treatment equipment and appliances.

SECTION 23.002. Section 341.101, Health and Safety Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:

(1) "Commission" means the Texas [~~Natural Resource Conservation~~] Commission of Licensing and Regulation.



(1-a) "Department" means the Texas Department of Licensing and Regulation.

SECTION 23.003. Section 341.103, Health and Safety Code, is amended to read as follows:

Sec. 341.103. CERTIFICATION REQUIRED. A person may not engage in water treatment unless the person first obtains a certificate from the department [~~commission~~] under the program established under this subchapter.

SECTION 23.004. Section 341.104, Health and Safety Code, is amended to read as follows:

Sec. 341.104. APPLICATION FOR CERTIFICATION. A person desiring to obtain certification under the program established under this subchapter shall file with the department [~~commission~~]:

(1) an application in the form prescribed by the department [~~commission~~] and containing the information required by the department [~~commission~~]; and

(2) the appropriate certification fee.

SECTION 23.005. Section 341.105(a), Health and Safety Code, is amended to read as follows:

(a) On receipt of an application that meets department [~~commission~~] requirements and the required fee, the department [~~commission~~] shall issue to a person who meets department [~~commission~~] standards for certification a certificate stating that the person is qualified to install, exchange, service, and repair residential, commercial, or industrial water treatment facilities.

SECTION 23.006. Section 3, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 23.007. (a) On November 1, 2003:

(1) all functions and activities relating to Section 341.034(e), Health and Safety Code, or Subchapter G, Chapter 341, Health and Safety Code, performed by the Texas Commission on Environmental Quality immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the Texas Commission on Environmental Quality that relates to Section 341.034(e), Health and Safety Code, or Subchapter G, Chapter 341, Health and Safety Code, is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a license or other document issued by the Texas Commission on Environmental Quality that relates to Section 341.034(e), Health and Safety Code, or Subchapter G, Chapter 341, Health and Safety Code, is considered a license or other document issued by the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(4) a reference in law or an administrative rule to the Texas Commission on Environmental Quality that relates to Section 341.034(e), Health and Safety Code, or Subchapter G, Chapter 341, Health and Safety Code, means the Texas Department of Licensing and Regulation;

(5) a complaint, investigation, or other proceeding before the Texas Commission on Environmental Quality that is related to Section 341.034(e), Health and Safety Code, or Subchapter G, Chapter 341, Health and Safety Code, is

transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas Commission on Environmental Quality in an action or proceeding to which the Texas Commission on Environmental Quality is a party;

(6) all money, contracts, leases, property, and obligations of the Texas Commission on Environmental Quality related to Section 341.034(e), Health and Safety Code, or Subchapter G, Chapter 341, Health and Safety Code, are transferred to the Texas Department of Licensing and Regulation;

(7) all property in the custody of the Texas Commission on Environmental Quality related to Section 341.034(e), Health and Safety Code, or Subchapter G, Chapter 341, Health and Safety Code, is transferred to the Texas Department of Licensing and Regulation; and

(8) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Commission on Environmental Quality related to Section 341.034(e), Health and Safety Code, or Subchapter G, Chapter 341, Health and Safety Code, is transferred to the Texas Department of Licensing and Regulation.

(b) Before November 1, 2003, the Texas Commission on Environmental Quality may agree with the Texas Department of Licensing and Regulation to transfer any property of the Texas Commission on Environmental Quality to the Texas Department of Licensing and Regulation to implement the transfer required by this article.

(c) In the period beginning on the effective date of this Act and ending on November 1, 2003, the Texas Commission on Environmental Quality shall continue to perform functions and activities under Section 341.034(e), Health and Safety Code, or Subchapter G, Chapter 341, Health and Safety Code, as if those provisions had not been amended by this Act, and the former law is continued in effect for that purpose.

#### ARTICLE 24. WATER WELL DRILLERS

SECTION 24.001. Section 1901.001, Occupations Code, is amended by adding Subdivisions (7-a) and (7-b) to read as follows:

(7-a) "Executive director" means the executive director of the department.

(7-b) "Groundwater conservation district" means a district to which Chapter 36, Water Code, applies.

SECTION 24.002. Section 1901.051, Occupations Code, is amended to read as follows:

Sec. 1901.051. LICENSING. (a) The department, with the advice of the council, shall prepare licensing examinations.

(b) The department shall [and] evaluate the qualifications of license applicants.

(c) [↔] The executive director [commissioner] shall issue licenses to applicants who qualify.

SECTION 24.003. Section 1901.052, Occupations Code, is amended to read as follows:

Sec. 1901.052. RULES. (a) The commission [commissioner, with advice and comment from the Texas Natural Resource Conservation Commission,] shall adopt rules as necessary to enforce this chapter, including rules governing:

- (1) license applications;
- (2) qualifications of applicants;

(3) standards of conduct for drillers, including standards for marking well drilling rigs and equipment; and

(4) procedures and practices before the department.

(b) The commission [~~commissioner~~] may not adopt a rule under this chapter that:

(1) regulates the installation or repair of well pumps and equipment by:

(A) a person on property the person owns or controls for the person's own use;

(B) an employee of a person described by Paragraph (A); or

(C) a person who is not hired or compensated and who acts on behalf of a person described by Paragraph (A); or

(2) requires a person who owns or controls property or possesses a well to complete, repair, or retrofit the well to any standard other than a standard in effect at the time the well was originally completed unless the well is found to be a threat to public health and safety or to water quality.

SECTION 24.004. Section 1901.101(a), Occupations Code, is amended to read as follows:

(a) The Texas Water Well Drillers Advisory Council consists of nine members appointed by the presiding officer of the commission, with the commission's approval, [~~department~~] as follows:

(1) six members who are drillers experienced in the well drilling business and familiar with well drilling, completion, and plugging methods and techniques; and

(2) three public members.

SECTION 24.005. Section 1901.105, Occupations Code, is amended to read as follows:

Sec. 1901.105. PRESIDING OFFICER. The presiding officer of the commission [~~council~~] shall appoint [~~elect~~] a member of the council to serve as presiding officer of the council for two years [~~by a majority vote at the first meeting each year~~].

SECTION 24.006. Sections 1901.109(a) and (d), Occupations Code, are amended to read as follows:

(a) The council may propose rules for adoption by the commission [~~commissioner~~] relating to the regulation of drillers registered under this chapter.

(d) The council shall assist the commission [~~department~~] in evaluating continuing education programs.

SECTION 24.007. Section 1901.152(b), Occupations Code, is amended to read as follows:

(b) An applicant must pay to the department an [~~a nonrefundable~~] examination fee at the time the application is submitted.

SECTION 24.008. Section 1901.162, Occupations Code, is amended to read as follows:

Sec. 1901.162. WAIVER FOR APPLICANT LICENSED IN ANOTHER STATE. The commission [~~commissioner~~] may adopt rules allowing waiver of a license requirement for an applicant who is licensed in another state that has license requirements substantially equivalent to those of this state.

SECTION 24.009. Section 1901.251(a), Occupations Code, is amended to read as follows:

(a) Each driller who drills, deepens, or otherwise alters a water well in this state shall make and keep a legible and accurate well log in accordance with rules adopted by the commission and on forms prescribed by the executive director [~~commissioner~~]. The well log shall be recorded at the time of drilling, deepening, or otherwise altering the well and must contain:

- (1) the depth, thickness, and character of the strata penetrated;
- (2) the location of water-bearing strata;
- (3) the depth, size, and character of casing installed; and
- (4) any other information required by rules adopted by the commission [~~commissioner~~].

SECTION 24.010. Section 1901.252(b), Occupations Code, is amended to read as follows:

(b) The commission [~~commissioner~~] shall adopt rules specifying the manner for marking a rig.

SECTION 24.011. Section 1901.253, Occupations Code, is amended to read as follows:

Sec. 1901.253. COMPLETING WATER WELL. A driller shall complete a well under standards and procedures adopted by the commission [~~commissioner~~].

SECTION 24.012. Section 1901.254(b), Occupations Code, is amended to read as follows:

(b) The driller shall ensure that the well is plugged, repaired, or properly completed under standards and procedures adopted by the commission [~~commissioner~~].

SECTION 24.013. Section 1901.255, Occupations Code, is amended by amending Subsections (c) and (d) and adding Subsection (e) to read as follows:

(c) Not later than the 180th day after the date a landowner or other person who possesses an abandoned or deteriorated well learns of its condition, the landowner or other person shall have the well plugged or capped under standards and procedures adopted by the commission [~~commissioner~~].

(d) Not later than the 30th day after the date the well is plugged, a [A] driller, licensed pump installer, or well owner who plugs an abandoned or deteriorated well shall submit a plugging report to:

(1) the board of directors of the groundwater conservation district in which the well is located, if the well is located in the boundaries of a groundwater conservation district; and

(2) the executive director [~~commissioner not later than the 30th day after the date the well is plugged~~].

(e) The department or the groundwater conservation district in which the well is located shall furnish plugging report forms on request. The executive director shall prescribe the content of the forms.

SECTION 24.014. Subchapter F, Chapter 1901, Occupations Code, is amended by adding Section 1901.256 to read as follows:

Sec. 1901.256. ENFORCEMENT BY GROUNDWATER CONSERVATION DISTRICT. (a) This section applies only to a violation related to a well located in the boundaries of the groundwater conservation district seeking to bring an action under this section.

(b) A groundwater conservation district shall enforce compliance with Section 1901.255 related to wells located in the boundaries of the district.

(c) A groundwater conservation district may bring an action to enjoin a person from violating Section 1901.255.

(d) A groundwater conservation district may enforce by injunction or other appropriate remedy in a court any rule, decision, determination, or order adopted or entered under this chapter that is related to Section 1901.255.

(e) A groundwater conservation district may bring an action to recover a civil penalty under Section 1901.401 for a violation of this chapter or a rule adopted under this chapter related to Section 1901.255.

(f) The groundwater conservation district may bring the action in the county in which:

(1) the offending activity occurred; or

(2) the person engaging in the activity resides.

SECTION 24.015. Subchapter F, Chapter 1901, Occupations Code, is amended by adding Section 1901.257 to read as follows:

Sec. 1901.257. MEMORANDUM OF UNDERSTANDING REGARDING ABANDONED WELLS. (a) In this section, "abandoned well" and "deteriorated well" have the meanings assigned by Section 1901.255.

(b) The Texas Commission on Environmental Quality and the department shall by rule adopt or revise a joint memorandum of understanding to coordinate the efforts of the department, groundwater conservation districts, and the field offices of the Texas Commission on Environmental Quality relating to investigative procedures for referrals of complaints regarding abandoned and deteriorated wells.

(c) Each groundwater conservation district in which an abandoned or deteriorated well is located shall join the memorandum of understanding adopted under Subsection (b).

SECTION 24.016. Section 1901.301, Occupations Code, is amended to read as follows:

Sec. 1901.301. GROUNDS FOR DISCIPLINARY ACTION. The commission [~~commissioner~~] may discipline a person under Section 51.353 for a violation of this chapter or a rule adopted under this chapter, including:

(1) an intentional misstatement or misrepresentation of a fact on an application or well log or to a person for whom a well is being drilled, deepened, or otherwise altered;

(2) the failure to keep, deliver, or send a well log as required by Section 1901.251;

(3) the failure to advise a person for whom a well is being drilled that:

(A) injurious water has been encountered;

(B) the water is a pollution hazard; and

(C) the well must be immediately plugged in an acceptable manner; or

(4) the failure to complete a well in accordance with standards and procedures adopted by the commission [~~commissioner~~].

SECTION 24.017. The following laws are repealed:

- (1) Section 1901.001(2), Occupations Code;
- (2) Section 1901.109(e), Occupations Code;
- (3) Section 1901.155(b), Occupations Code;
- (4) Section 1901.156, Occupations Code;
- (5) Section 1901.157, Occupations Code;
- (6) Section 1901.160, Occupations Code;
- (7) Section 1901.205, Occupations Code;
- (8) Section 1901.302, Occupations Code;
- (9) Section 1901.303, Occupations Code;
- (10) Section 1901.304, Occupations Code; and
- (11) Subchapter H, Chapter 1901, Occupations Code.

SECTION 24.018. The changes in law made to Section 1901.255, Occupations Code, by this article do not affect the status of a complaint, investigation, or other proceeding that commenced before September 1, 2003. A groundwater conservation district, as appropriate and without a change in status, assumes the position of the executive director of the Texas Department of Licensing and Regulation in an action or proceeding relating to a well located in the boundaries of that groundwater conservation district.

SECTION 24.019. The changes in law made by this article applying to members of the Texas Water Well Drillers Advisory Council do not affect the entitlement of a member serving on the council immediately before September 1, 2003, to continue to serve and function as a member of the council for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

#### ARTICLE 25. WATER WELL PUMP INSTALLERS

SECTION 25.001. Section 1902.001, Occupations Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Executive director" means the executive director of the department.

SECTION 25.002. Section 1902.051, Occupations Code, is amended to read as follows:

Sec. 1902.051. LICENSING. (a) The department, with the advice of the council, shall prepare licensing examinations.

(b) The department shall [and] evaluate the qualifications of license applicants.

(c) [and] The executive director [~~commissioner~~] shall issue licenses to applicants who qualify.

SECTION 25.003. Section 1902.052, Occupations Code, is amended to read as follows:

Sec. 1902.052. RULES. (a) The commission [~~commissioner~~] shall adopt rules as necessary to enforce this chapter.

(b) The commission [~~commissioner~~] may not adopt a rule under this chapter that:

- (1) regulates the installation or repair of well pumps and equipment by:

(A) a person on property the person owns or controls for the person's own use;

(B) an employee of a person described by Paragraph (A); or

(C) a person who is not hired or compensated and who acts on behalf of a person described by Paragraph (A); or

(2) requires a person who owns or controls property or possesses a well to complete, repair, or retrofit the well to any standard other than a standard in effect at the time the well was originally completed unless the well is found to be a threat to public health and safety or to water quality.

SECTION 25.004. Section 1902.152(b), Occupations Code, is amended to read as follows:

(b) An applicant must pay to the department an ~~[a nonrefundable]~~ examination fee at the time the application is submitted.

SECTION 25.005. Section 1902.162, Occupations Code, is amended to read as follows:

Sec. 1902.162. WAIVER FOR APPLICANT LICENSED IN ANOTHER STATE. The commission ~~[commissioner]~~ may adopt rules allowing waiver of a license requirement for an applicant who is licensed in another state that has license requirements substantially equivalent to those of this state.

SECTION 25.006. Section 1902.251, Occupations Code, is amended to read as follows:

Sec. 1902.251. INSTALLING AND REPAIRING PUMPS. An installer shall install or repair pumps under standards and procedures adopted by the commission ~~[commissioner]~~ with the advice of the council.

SECTION 25.007. Section 1902.252(b), Occupations Code, is amended to read as follows:

(b) To avoid injury or pollution, the installer shall repair or properly complete the well under standards and procedures adopted by the commission ~~[commissioner]~~.

SECTION 25.008. The following laws are repealed:

- (1) Section 1902.001(2), Occupations Code;
- (2) Section 1902.101, Occupations Code;
- (3) Section 1902.155(b), Occupations Code;
- (4) Section 1902.156, Occupations Code;
- (5) Section 1902.157, Occupations Code;
- (6) Section 1902.160, Occupations Code;
- (7) Section 1902.204, Occupations Code; and
- (8) Subchapters G and H, Chapter 1902, Occupations Code.

#### ARTICLE 26. WEATHER MODIFICATION

SECTION 26.001. Section 1.01, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended by amending Subdivision (1) and adding Subdivision (2-a) to read as follows:

(1) "Commission" ~~["Commissioner"]~~ has the meaning assigned by Section 51.001, Occupations Code.

(2-a) "Executive director" means the executive director of the department.

SECTION 26.002. Article 1, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended by adding Section 1.02 to read as follows:

Sec. 1.02. APPLICABILITY OF OTHER LAW. Sections 51.404 and 51.405, Occupations Code, do not apply to this article.

SECTION 26.003. Section 1.11, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.11. RULES. The commission [~~department~~] may adopt rules necessary to:

- (1) exercise the powers and perform the duties under this article;
- (2) establish procedures and conditions for the issuance of licenses and permits under this article; and
- (3) establish standards and instructions to govern the carrying out of research or projects in weather modification and control that the commission [~~department~~] considers necessary or desirable to minimize danger to health or property.

SECTION 26.004. Section 1.13, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.13. ADVISORY COMMITTEES. The commission [~~department~~] may establish advisory committees to advise the commission [~~department~~] and to make recommendations to the commission [~~department~~] concerning legislation, policies, administration, research, and other matters related to the department's duties, powers, or functions under this article. If the commission establishes an advisory committee under this section, the presiding officer of the commission, with the commission's approval, shall appoint a member of the committee to serve as the presiding officer of the committee for a two-year term.

SECTION 26.005. Section 1.16, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.16. INTERSTATE COMPACTS. The commission [~~commissioner~~] may represent the state in matters pertaining to plans, procedures, or negotiations for interstate compacts relating to weather modification and control.

SECTION 26.006. Section 1.18(b), Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The department with approval of the commission [~~commissioner~~] may conduct and may contract for research and development activities relating to the purposes of this section.

SECTION 26.007. Section 1.31, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.31. LICENSE AND PERMIT REQUIRED. Except as provided by rule of the commission [~~department~~] under Section 1.32 of this article, a person may not engage in activities for weather modification and control:



(1) without a weather modification license and weather modification permit issued by the department; or

(2) in violation of any term or condition of the license or permit.

SECTION 26.008. Section 1.32, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.32. EXEMPTIONS. (a) The commission [~~department~~] by rule, to the extent it considers exemptions practical, shall provide for exempting the following activities from the license and permit requirements of this article:

(1) research, development, and experiments conducted by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations;

(2) laboratory research and experiments;

(3) activities of an emergent nature for protection against fire, frost, sleet, or fog; and

(4) activities normally conducted for purposes other than inducing, increasing, decreasing, or preventing precipitation or hail.

(b) The commission [~~department~~] by rule may modify or revoke an exemption.

SECTION 26.009. Section 1.41(v), Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

(v) The commission [~~department~~] by rule shall define hail suppression as used in this section, using the most current scientifically accepted technological concepts.

SECTION 26.010. Section 1.64, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.64. PROCEDURES. The commission [~~department~~] by rule shall establish procedures for public notice and any public hearing under this subchapter.

SECTION 26.011. Section 1.65, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.65. HEARINGS. A hearing under this article [~~subchapter~~] shall be conducted in accordance with the hearing rules adopted by the commission [~~department~~] and the applicable provisions of Chapters 51, Occupations Code, and [~~Chapter~~] 2001, Government Code.

SECTION 26.012. Section 1.66, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.66. CONSENT. If a permit holder or license holder requests or consents to the revocation or suspension of the permit or license, the commission [~~commissioner~~] may revoke or suspend the permit or license without a hearing.

SECTION 26.013. The following laws are repealed:

(1) Section 1.34, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes);

(2) Section 1.38, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes); and

(3) Section 1.68, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes).

ARTICLE 27. CONFORMING AMENDMENTS RELATED TO  
CERTAIN PROGRAMS TRANSFERRED FROM THE TEXAS  
COMMISSION ON ENVIRONMENTAL QUALITY

SECTION 27.001. The heading to Chapter 37, Water Code, is amended to read as follows:

CHAPTER 37. OCCUPATIONAL LICENSING AND REGISTRATION  
PROGRAMS ADMINISTERED BY TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

SECTION 27.002. Section 37.002, Water Code, is amended to read as follows:

Sec. 37.002. RULES. The commission shall adopt any rules necessary to:

(1) establish occupational licenses and registrations prescribed by Sections 26.0301 and [~~7~~] 26.3573 [~~26.452, 26.456, and 34.007~~] of this code and Sections 341.033, 341.034(a) and (b) [~~341.034~~], 361.027, and 366.071, Health and Safety Code;

(2) establish classes and terms of occupational licenses and registrations; and

(3) administer the provisions of this chapter and other laws governing occupational licenses and registrations under the commission's jurisdiction.

SECTION 27.003. Section 37.003, Water Code, is amended to read as follows:

Sec. 37.003. LICENSE OR REGISTRATION REQUIRED. A person may not engage in a business, occupation, or profession described by Section 26.0301 or [~~7~~] 26.3573 [~~26.452, 26.456, or 34.007~~] of this code or Section 341.033, 341.034(a) or (b) [~~341.034~~], 361.027, 366.014, or 366.071, Health and Safety Code, unless the person holds the appropriate license or registration issued by the commission.

SECTION 27.004. Subtitle F, Title 2, Water Code, is amended by adding Chapter 38 to read as follows:

CHAPTER 38. OCCUPATIONAL LICENSING PROGRAMS  
ADMINISTERED BY TEXAS DEPARTMENT OF LICENSING  
AND REGULATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 38.001. DEFINITIONS. In this chapter, terms have the meanings assigned by Section 51.001, Occupations Code.

[Sections 38.002-38.050 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES

Sec. 38.051. ADMINISTRATION. The department shall administer this chapter.

Sec. 38.052. RULES. The commission shall adopt any rules necessary to:

(1) establish occupational licenses prescribed by Sections 26.452 and 26.456 of this code and Sections 341.034(c), (d), and (e), Health and Safety Code; and

(2) establish classes and terms of occupational licenses.

Sec. 38.053. CONTRACTS. The department may contract with persons to provide services required by this chapter. The department may authorize contractors to collect reasonable fees for the services provided.

Sec. 38.054. COMPLIANCE INFORMATION. In administering this chapter, the department may require a person to provide information about any other occupational license held by the person, including:

- (1) the state in which the license was issued;
- (2) the current status of the license; and
- (3) whether the license was ever denied, suspended, revoked, surrendered,

or withdrawn.

Sec. 38.055. ROSTER OF LICENSE HOLDERS. The department shall maintain and make available to the public a roster of persons who hold licenses issued under this chapter.

[Sections 38.056-38.100 reserved for expansion]

#### SUBCHAPTER C. LICENSE REQUIREMENTS

Sec. 38.101. LICENSE REQUIRED. A person may not engage in a business, occupation, or profession described by Section 26.452 or 26.456 of this code or Section 341.034(c), (d), or (e), Health and Safety Code, unless the person holds the appropriate license.

Sec. 38.102. QUALIFICATIONS. The commission may establish qualifications for each license issued under this chapter.

Sec. 38.103. ISSUANCE AND DENIAL OF LICENSES. (a) The commission shall establish requirements and uniform procedures for issuing licenses under this chapter.

(b) After notice and hearing, the commission may deny an application for a license by an applicant who:

(1) has a record in the preceding five years of continuing violations of statutes or rules adopted under statutes;

(2) has engaged in fraud or deceit in obtaining or applying for a license;

(3) has demonstrated gross negligence, incompetence, or misconduct in the performance of activities authorized by a license;

(4) made an intentional misstatement or misrepresentation of fact in information required to be maintained or submitted to the commission by the license holder;

(5) failed to keep and transmit records as required by a statute or a rule adopted under a statute; or

(6) at the time the application is submitted, is indebted to the state for a fee, penalty, or tax imposed by a statute or a rule adopted under a statute.

Sec. 38.104. RENEWAL OF LICENSE. The commission shall establish requirements and uniform procedures for renewing licenses.

Sec. 38.105. LICENSING EXAMINATIONS. (a) The department shall prescribe the content of licensing examinations. The department shall base the examinations on laws, rules, job duties, and standards relating to licenses issued under this chapter.

(b) The department shall determine the location and frequency of examinations.

(c) The department shall ensure that an otherwise qualified person with a physical, mental, or developmental disability is provided with a reasonable opportunity to take a licensing examination.

## ARTICLE 28. GENERAL CONFORMING AMENDMENTS

SECTION 28.001. Section 57.044, Government Code, is amended to read as follows:

Sec. 57.044. COURT INTERPRETER LICENSE. To qualify for a court interpreter license under this subchapter, an individual must apply on a form prescribed by the executive director [~~commissioner~~] and demonstrate, in the manner required by the executive director [~~commissioner~~], reasonable proficiency in interpreting English and court proceedings for individuals who can hear but who do not comprehend English or communicate in English.

SECTION 28.002. Sections 57.046(a) and (c), Government Code, are amended to read as follows:

(a) The executive director [~~commissioner~~] shall prepare examinations under this subchapter that test an applicant's knowledge, skill, and efficiency in interpreting under this subchapter.

(c) Examinations shall be offered in the state at least twice a year at times and places designated by the executive director [~~commissioner~~].

SECTION 28.003. The heading to Section 57.047, Government Code, is amended to read as follows:

Sec. 57.047. [~~COMMISSIONER AND~~] DEPARTMENT DUTIES; INSPECTIONS.

SECTION 28.004. Section 57.047(a), Government Code, is amended to read as follows:

(a) The executive director [~~commissioner~~] shall enforce this subchapter.

SECTION 28.005. Section 754.020, Health and Safety Code, is amended to read as follows:

Sec. 754.020. DEPOSIT OF FEES. Fees collected under this subchapter shall be deposited to the credit of an account in the general revenue fund that may be used by the executive director [~~commissioner~~] only to administer and enforce this subchapter and to reimburse expenses of board members provided by this subchapter.

SECTION 28.006. Section 754.021, Health and Safety Code, is amended to read as follows:

Sec. 754.021. LIST OF INSPECTORS; PERSONNEL. The executive director [~~commissioner~~] may:

(1) compile a list of ASME-QEI-1 certified inspectors who are registered with the department to perform an inspection under this subchapter; and

(2) employ personnel as necessary to enforce this subchapter.

SECTION 28.007. Section 754.022, Health and Safety Code, is amended to read as follows:

Sec. 754.022. NOTICE OF NONCOMPLIANCE. If the executive director [~~commissioner~~] learns of a situation of noncompliance under Section 754.019, the executive director [~~commissioner~~] shall send notice by certified mail of the noncompliance and the actions required to remedy the noncompliance to the record owner of the real property on which the equipment that is the subject of the noncompliance is located.

SECTION 28.008. Sections 755.023(a), (c), and (d), Health and Safety Code, are amended to read as follows:

(a) The executive director [~~commissioner~~] shall appoint a chief inspector of boilers to administer the boiler program. The chief inspector must:

- (1) be a resident of this state and a citizen of the United States;
- (2) have at least five years' experience in the construction, installation, inspection, operation, maintenance, or repair of boilers; and
- (3) pass a written examination that demonstrates the necessary ability to judge the safety of boilers.

(c) As needed, the executive director [~~commissioner~~] shall appoint persons with qualifications similar to those of the chief inspector to serve as deputy inspectors.

(d) The executive director [~~commissioner~~] may employ clerical assistants as necessary to carry out this chapter.

SECTION 28.009. Sections 755.024(a), (b), (f), and (g), Health and Safety Code, are amended to read as follows:

(a) To be an authorized inspector, a person must obtain a commission as a boiler inspector from the executive director [~~commissioner~~] and must be continuously employed by an inspection agency.

(b) The executive director [~~commissioner~~], by written examination, shall determine the qualifications of an applicant for a commission to be an authorized inspector.

(f) After proper investigation, the executive director [~~commissioner~~] may accept an inspection commission issued to a person by any other jurisdiction that has a written examination equal to that of this state.

(g) For good cause, the executive director [~~commissioner~~] may rescind a commission issued by this state.

SECTION 28.010. Sections 755.025(a), (f), and (g), Health and Safety Code, are amended to read as follows:

(a) The executive director [~~commissioner~~] shall require each boiler to be inspected internally and externally at the time of initial installation and at subsequent intervals as provided by this section. The executive director [~~commissioner~~] may provide that the inspection be performed by any inspector.

(f) The executive director [~~commissioner~~] shall designate the manner of inspection for nuclear boilers, the form of the inspection report, and the information to be reported. The executive director [~~commissioner~~] and the owner of a nuclear boiler shall establish the intervals of inspection for the boiler.

(g) The executive director [~~commissioner~~] may authorize the inspection of a boiler at any reasonable time if the executive director [~~commissioner~~] determines that the boiler may be in an unsafe condition. The executive director [~~commissioner~~] shall notify the inspection agency that insures that boiler and request the authorized inspector employed by that agency to participate with the chief inspector or a deputy inspector in a joint inspection of the boiler not later than the 20th day after the date on which the executive director [~~commissioner~~] notifies the inspection agency. An additional charge may not be made for the joint inspection.

SECTION 28.011. Sections 755.026(a), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) With the approval of the executive director [~~commissioner~~] and the inspection agency that has jurisdiction for the power boiler, the interval between internal inspections may be extended to a period not exceeding a total of 48 months. For other unfired steam boilers or steam collection or liberation drums of process steam generators, the inspection interval may be extended to the next scheduled downtime of the boiler, but not exceeding a total of 84 months.

(c) The executive director [~~commissioner~~] and the inspection agency may grant an additional extension for a period not exceeding 120 days to the inspection interval covered by the boiler's certificate of operation on receipt of a request for extension stating that an emergency exists. Before the extension may be granted, the inspection agency must make an external inspection of the boiler, and the conditions imposed under Subsection (b) must be met.

(d) If an extended period between internal inspections is approved by the executive director [~~commissioner~~] and the inspection agency, the executive director [~~commissioner~~] shall issue a new certificate of operation for the extended period of operation.

(e) If the interval between internal inspections of a gas fired boiler is extended under Subsection (a), the executive director [~~commissioner~~] and inspection agency shall require that an inspection of the gas regulator or pressure reducing valve that services the boiler be performed as part of the next regularly scheduled external certificate inspection of the boiler to verify proper venting of gas to a safe point of discharge.

SECTION 28.012. Sections 755.027(a) and (c), Health and Safety Code, are amended to read as follows:

(a) Not later than the 30th day after the date on which a certificate inspection is performed by an authorized inspector, the inspection agency employing the authorized inspector shall file a report with the executive director [~~commissioner~~] in the manner specified by the executive director [~~department~~].

(c) An inspection agency shall notify the executive director [~~commissioner~~] in writing of the cancellation or expiration of any insurance policy issued by that agency to cover a boiler located in this state, and shall include in the notice the reason for the cancellation or expiration. The notice must state the date the policy was issued and the date on which the cancellation or expiration takes effect.

SECTION 28.013. Section 755.028, Health and Safety Code, is amended to read as follows:

Sec. 755.028. SPECIAL INSPECTIONS. The executive director [~~commissioner~~] may provide a special inspection service to the owners, operators, and manufacturers of boilers. The service may include surveys required for certification to construct, assemble, or repair boilers or pressure vessels.

SECTION 28.014. Section 755.029(a), Health and Safety Code, is amended to read as follows:

(a) The executive director [~~commissioner~~] shall issue to the owner or operator of a boiler a certificate of operation for the boiler if after a certificate inspection:

- (1) the boiler is found to be in a safe condition for operation; and
- (2) the owner or operator has paid the fees assessed under Section 755.030.

SECTION 28.015. Section 755.042, Health and Safety Code, is amended to read as follows:

Sec. 755.042. PROSECUTION; INJUNCTION. (a) A prosecution may not be maintained if the issuance or renewal of a certificate of operation has been requested for a boiler but has not been acted on. However, the executive director [~~commissioner~~] may petition a district court for an injunction to restrain the operation of the boiler until the condition restraining its use is corrected and a certificate of operation is issued if the executive director [~~commissioner~~] determines that the operation of the boiler without a certificate of operation constitutes a serious menace to the life and safety of the persons in or about the premises. The attorney general or the district or county attorney may bring the suit, and venue is in the county in which the boiler is located or in Travis County. It is not necessary for the prosecutor to verify the pleadings or for the state to execute a bond.

(b) The executive director's [~~commissioner's~~] affidavit that a certificate of operation or an application for a certificate does not exist for a boiler, and the affidavit of the chief inspector or a deputy inspector that the operation of the boiler constitutes a menace to the life and safety of persons in or about the premises, are sufficient proof to warrant the immediate issuance of a temporary restraining order.

SECTION 28.016. Section 91.003(a), Labor Code, is amended to read as follows:

(a) Each state agency that in performing duties under other law affects the regulation of staff leasing services shall cooperate with the department [~~the commissioner,~~] and other state agencies as necessary to implement and enforce this chapter.

SECTION 28.017. Section 91.015(c), Labor Code, is amended to read as follows:

(c) Before denying a license application, the department shall provide written notice to an applicant specifying the reasons for the denial. The department shall provide the applicant at least 30 days after the date of the notice to address the reasons for the denial. For good cause and on a showing of a good faith effort to remedy the reasons for the denial, the executive director [~~commissioner~~] may grant an additional 30 days to remedy the reasons for denial.

SECTION 28.018. Section 91.048, Labor Code, is amended to read as follows:

Sec. 91.048. REQUIRED INFORMATION. Each license holder shall:

(1) maintain adequate books and records regarding the license holder's duties and responsibilities;

(2) maintain and make available at all times to the executive director [~~commissioner~~] the following information, which shall be treated as proprietary and confidential and is exempt from disclosure to persons other than other governmental agencies having a reasonable, legitimate purpose for obtaining the information:

(A) the correct name, address, and telephone number of each client company;

(B) each client company contract; and

(C) a listing by classification code as described in the "Standard Industrial Classification Manual" published by the United States Office of Management and Budget, of each client company;

(3) notify the department of any addition or deletion of a controlling person as listed on the license application or renewal form by providing the name of the person not later than the 45th day after the date on which the person is added or deleted as a controlling person; and

(4) provide a biographical history to the department in connection with the addition of a new controlling person.

SECTION 28.019. Section 91.062(a), Labor Code, is amended to read as follows:

(a) The executive director [~~commissioner~~] may notify the attorney general of a violation of this chapter. The attorney general may apply to a district court in Travis County for permission to file for quo warranto relief, injunctive relief, or both.

SECTION 28.020. Section 92.014(a), Labor Code, is amended to read as follows:

(a) The department shall issue a temporary common worker employer license to a person who meets the application requirements established by the executive director [~~commissioner~~] and pays the application and registration fees set by the commission.

SECTION 28.021. Section 92.031(a), Labor Code, is amended to read as follows:

(a) A person commits an offense if the person knowingly or intentionally violates:

- (1) this chapter;
- (2) a rule adopted under this chapter; or
- (3) an administrative order adopted [~~by the commissioner~~] under this chapter.

SECTION 28.022. Sections 1152.154(a) and (c), Occupations Code, are amended to read as follows:

(a) An applicant for registration must file an application with the department on a printed form prescribed by the executive director [~~commissioner~~].

(c) The department shall refund the registration fee if the executive director [~~commissioner~~] does not approve the application.

SECTION 28.023. Section 1152.156, Occupations Code, is amended to read as follows:

Sec. 1152.156. ELIGIBILITY TO REGISTER AS PROPERTY TAX CONSULTANT. (a) In addition to satisfying the requirements of Section 1152.155, an applicant for registration as a property tax consultant must:

(1) complete at least 15 classroom hours of educational courses approved by the executive director [~~commissioner~~], including at least four hours of instruction on laws and legal issues in this state related to property tax consulting services; or

(2) if the person is eligible for registration under Section 1152.155(b), submit to the commission evidence that the applicant has completed at least four classroom hours of educational programs or courses on the laws and legal issues in this state related to property tax consulting services.

(b) The executive director [~~commissioner~~] may give appropriate credit to an initial applicant for:



(1) educational courses on principles of law related to property tax consulting services completed by the applicant not more than two years before the date of application; and

(2) educational programs or courses completed by the applicant on:

(A) property taxation;

(B) the property tax system;

(C) property tax administration;

(D) ethical standards; or

(E) general principles of appraisal, accounting, or law as they relate to property tax consulting services.

SECTION 28.024. Section 1152.159, Occupations Code, is amended to read as follows:

Sec. 1152.159. CREDITS FOR SENIOR PROPERTY TAX CONSULTANT APPLICANTS. (a) The executive director [~~commissioner~~] shall grant credit to an applicant for registration as a senior property tax consultant as follows:

(1) two credits for each year the applicant completed at an institution of higher education that meets program and accreditation standards comparable to those for public institutions of higher education as determined by the Texas Higher Education Coordinating Board, not to exceed six credits;

(2) four credits to an applicant who holds a bachelor's degree or equivalent from an institution of higher education described by Subdivision (1); and

(3) one credit for each year in excess of five years that the applicant's primary occupation involved the performance or supervision of property tax consulting services or property appraisal, assessment, or taxation, not to exceed 10 credits.

(b) The executive director [~~commissioner~~] may grant additional credits to an applicant for registration as a senior property tax consultant for:

(1) successful completion of educational programs or courses on:

(A) property taxation;

(B) the property tax system;

(C) property tax administration;

(D) ethical standards; or

(E) general principles of appraisal, accounting, and law as they relate to property tax consulting services;

(2) completion of other educational programs or courses; or

(3) advanced or postgraduate educational achievement, occupational experience, professional licenses, or professional designations obtained from recognized associations, institutes, or organizations.

(c) The executive director [~~commissioner~~] may assign not less than one credit or more than five credits to a program or course described by Subsection (b)(1). In determining the amount of credit for the program or course, the executive director [~~commissioner~~] shall consider:

(1) the nature of the program or course;

(2) the number of actual instructional hours in the program or course;

(3) whether an examination is required for successful completion of the program or course; and

(4) other factors the executive director [~~commissioner~~] determines appropriate.

SECTION 28.025. Section 1152.162, Occupations Code, is amended to read as follows:

Sec. 1152.162. ISSUANCE OF CERTIFICATE OF REGISTRATION. (a) The executive director [~~commissioner~~] shall act on an initial application for registration filed under Section 1152.154 not later than the 31st day after the date the department receives the application.

(b) The executive director [~~commissioner~~] shall issue to an applicant who qualifies for registration the appropriate certificate of registration.

SECTION 28.026. Section 1202.055, Occupations Code, is amended to read as follows:

Sec. 1202.055. SECRETARY; PERSONNEL. The executive director [~~commissioner~~] shall:

(1) act as secretary of the council; and

(2) provide personnel from the department necessary to perform staff functions for the council.

SECTION 28.027. Sections 1202.105(b) and (c), Occupations Code, are amended to read as follows:

(b) The executive director [~~commissioner~~] shall recommend qualified third-party inspectors and design review agencies to the council.

(c) The executive director [~~commissioner~~] shall publish a list of all approved inspectors and design review agencies.

SECTION 28.028. Section 1302.002(12), Occupations Code, is amended to conform to Section 1, Chapter 790, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(12) "Mechanical integrity" means the condition of a product, a system, or equipment installed in accordance with its intended purpose and according to:

(A) standards at least as strict as the standards provided by:

(i) the Uniform Mechanical Code [~~published jointly by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials, or their successor organizations~~]; and [~~or~~]

(ii) the International [Standard] Mechanical Code [~~published by the Southern Building Code Congress International, Inc., or its successor organization~~];

(B) all other applicable codes; and

(C) the manufacturer's specifications.

SECTION 28.029. Section 1302.102, Occupations Code, is amended to read as follows:

Sec. 1302.102. INSURANCE REQUIREMENTS. (a) The executive director [~~commissioner~~] shall set insurance requirements for a license holder under this chapter.

(b) The executive director [~~commissioner~~] may waive the insurance requirements for a license holder who does not engage in air conditioning and refrigeration contracting for the public.

SECTION 28.030. Section 1302.151, Occupations Code, is amended to read as follows:

Sec. 1302.151. CONSUMER INTEREST INFORMATION. (a) The executive director [~~commissioner~~] shall prepare information of consumer interest describing:

(1) the functions performed by the executive director [~~commissioner~~] under this chapter; and

(2) the rights of a consumer affected by this chapter.

(b) The information must describe the procedure by which a consumer complaint is filed with and resolved by the executive director [~~commissioner~~].

(c) The executive director [~~commissioner~~] shall make the information available to the public.

SECTION 28.031. Section 1302.203, Occupations Code, is amended to read as follows:

Sec. 1302.203. EX OFFICIO MEMBERS. The executive director [~~commissioner~~] and the chief administrator of this chapter serve as ex officio, nonvoting members of the advisory board.

SECTION 28.032. Section 1302.253(a), Occupations Code, is amended to read as follows:

(a) The executive director [~~commissioner~~] shall issue a Class A or Class B air conditioning and refrigeration contractor license.

SECTION 28.033. Sections 1302.256(a) and (c), Occupations Code, are amended to read as follows:

(a) An applicant for a license must submit a verified application on a form prescribed by the executive director [~~commissioner~~].

(c) The application must be accompanied by:

(1) a statement containing evidence satisfactory to the executive director [~~commissioner~~] of the applicant's practical experience required by Section 1302.255(a)(2); and

(2) the examination fee.

SECTION 28.034. Section 1302.257, Occupations Code, is amended to read as follows:

Sec. 1302.257. EXAMINATIONS. (a) The executive director [~~commissioner~~] shall prescribe:

(1) a separate examination for each class of license; and

(2) within each class of license, a separate examination for:

(A) an environmental air conditioning endorsement; and

(B) a commercial refrigeration and process cooling or heating endorsement.

(b) The executive director [~~commissioner~~] shall prescribe the method and content of an examination administered under this chapter and shall set compliance requirements for the examination. To obtain an endorsement, an applicant must pass the examination for the endorsement.

(c) The examination shall be offered on a monthly basis or more frequently as determined by the executive director [~~commissioner~~].

(d) The examination shall be offered at locations within the state as determined by the executive director [~~commissioner~~]. The examination may be offered by computer at locations within the state as determined by the executive director [~~commissioner~~].

SECTION 28.035. Section 1302.260(a), Occupations Code, is amended to read as follows:

(a) On payment of the license fee, the executive director [~~commissioner~~] shall issue an air conditioning and refrigeration contractor license to an applicant who:

- (1) meets the requirements of this subchapter;
- (2) provides evidence of insurance coverage required by the executive director [~~commissioner~~] in accordance with this chapter; and
- (3) passes the applicable examination.

SECTION 28.036. Section 1302.303(b), Occupations Code, is amended to read as follows:

(b) The municipality shall report a violation of the ordinance to the executive director [~~commissioner~~] not later than the 10th day after the date the municipality acts to enforce the ordinance.

SECTION 28.037. Section 1302.451, Occupations Code, is amended to read as follows:

Sec. 1302.451. EMERGENCY AND CEASE AND DESIST ORDERS. (a) The executive director [~~commissioner~~] may issue an emergency order as necessary to enforce this chapter if the executive director [~~commissioner~~] determines that an emergency exists requiring immediate action to protect the public health and safety.

(b) The executive director [~~commissioner~~] may issue the emergency order without notice and hearing or with any notice and hearing the executive director [~~commissioner~~] considers practicable under the circumstances. The executive director [~~commissioner~~] shall set the time and place for a hearing to affirm, modify, or set aside an emergency order that was issued without a hearing.

(c) The executive director [~~commissioner~~] may issue a cease and desist order.

SECTION 28.038. Section 1304.007, Occupations Code, is amended to read as follows:

Sec. 1304.007. GENERAL INVESTIGATIVE POWER OF EXECUTIVE DIRECTOR [~~COMMISSIONER~~]. (a) The executive director [~~commissioner~~] may investigate a provider, administrator, or other person as necessary to enforce this chapter and protect service contract holders in this state.

(b) On request of the executive director [~~commissioner~~], a provider shall make the records required by Section 1304.155 available to the executive director [~~commissioner~~] as necessary to enable the executive director [~~commissioner~~] to reasonably determine compliance with this chapter.

SECTION 28.039. Section 1304.102, Occupations Code, is amended to read as follows:

Sec. 1304.102. APPLICATION FOR REGISTRATION. (a) An applicant for registration must submit an application to the executive director [~~commissioner~~].

(b) The application must:

- (1) be in the form prescribed by the executive director [~~commissioner~~]; and
- (2) include evidence satisfactory to the executive director [~~commissioner~~] of compliance with the applicable financial security requirements prescribed by Section 1304.151.

SECTION 28.040. Section 1304.104, Occupations Code, is amended to read as follows:

Sec. 1304.104. INFORMATION CONCERNING NUMBER OF SERVICE CONTRACTS SOLD. Information concerning the number of service contracts sold by a provider that is submitted under Section 1304.103:

(1) is a trade secret to which Section 552.110, Government Code, applies; and

(2) may be used only by the executive director [~~commissioner~~] and the department in developing the tiered fee schedule under Section 1304.103.

SECTION 28.041. Section 1304.152(b), Occupations Code, is amended to read as follows:

(b) The insurer may not cancel the policy until the insurer delivers to the provider a written notice of cancellation that complies with the notice requirements prescribed by Articles 21.49-2A and 21.49-2B, Insurance Code, for cancellation of an insurance policy under those articles. The provider shall forward a copy of the cancellation notice to the executive director [~~commissioner~~] not later than the 15th business day after the date the notice is delivered to the provider. Cancellation of the policy does not reduce the insurer's responsibility for a service contract issued by the provider and insured under the policy before the date of the cancellation.

SECTION 28.042. Sections 1304.155(b) and (d), Occupations Code, are amended to read as follows:

(b) The records required by this section may be maintained in an electronic medium or through other recordkeeping technology. If a record is not in a hard copy, the provider must be able to reformat the record into a legible hard copy at the request of the executive director [~~commissioner~~].

(d) A provider that discontinues business in this state shall retain its records until the provider furnishes the executive director [~~commissioner~~] with proof satisfactory to the executive director [~~commissioner~~] that the provider has discharged all obligations to service contract holders in this state.

SECTION 28.043. Section 1304.202, Occupations Code, is amended to read as follows:

Sec. 1304.202. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The executive director [~~commissioner~~] may institute an action under Section 51.352 for injunctive relief to restrain a violation or a threatened violation of this chapter or an order issued or rule adopted under this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the executive director [~~commissioner~~] may institute an action for a civil penalty as provided by Section 51.352. The amount of a civil penalty assessed under this section may not exceed:

(1) \$2,500 for each violation; or

(2) \$50,000 in the aggregate for all violations of a similar nature.

SECTION 28.044. Section 1802.002, Occupations Code, is amended to read as follows:

Sec. 1802.002. APPLICABILITY. This chapter does not apply to:

(1) a sale conducted by order of a United States court under Title 11, United States Code;

(2) a sale conducted by an employee of the United States, this state, or a political subdivision of this state in the course and scope of employment;

- (3) a sale conducted by a charitable or nonprofit organization, if the auctioneer receives no compensation;
- (4) a sale conducted by an individual of the individual's property if the individual is not engaged in the business of selling property as an auctioneer on a recurring basis;
- (5) a foreclosure sale of real property personally conducted by a trustee under a deed of trust;
- (6) a foreclosure sale of personal property personally conducted by:
- (A) a person who holds a security interest in the property, including a mortgage; or
- (B) an employee or agent of a person described by Paragraph (A) acting in the course and scope of employment, if:
- (i) the employee or agent is not otherwise engaged in the auction business; and
- (ii) all property for sale in the auction is subject to a security agreement;
- (7) a sale conducted by sealed bid;
- (8) an auction conducted only for student training purposes as part of a course of study approved by the executive director [~~commissioner~~] for auctioneers;
- (9) an auction conducted by a posted stockyard or market agency as defined by the federal Packers and Stockyards Act (7 U.S.C. Section 181 et seq.), as amended;
- (10) an auction of livestock conducted by a nonprofit livestock trade association chartered in this state, if the auction involves only the sale of livestock owned by members of the trade association; or
- (11) an auction conducted by a charitable or nonprofit organization chartered in this state, if the auction:
- (A) is part of a fair that is organized under state, county, or municipal authority; and
- (B) involves only the sale of property owned by the organization's members.

SECTION 28.045. Section 1802.051(a), Occupations Code, is amended to read as follows:

(a) A person may not act as an auctioneer or associate auctioneer in an auction held in this state unless the person is an individual who holds a license issued by the executive director [~~commissioner~~] under this chapter.

SECTION 28.046. Section 1802.054, Occupations Code, is amended to read as follows:

Sec. 1802.054. APPLICATION FOR LICENSE. An applicant for a license must apply to the executive director [~~commissioner~~] on a form provided by the executive director [~~commissioner~~] that establishes the applicant's eligibility for the license. The application must be accompanied by:

- (1) the required bond;
- (2) the required license fee; and
- (3) either:

(A) the permit number of a sales tax permit issued to the applicant by the comptroller under Subchapter F, Chapter 151, Tax Code; or

(B) proof of exemption from the tax permit requirement under Chapter 151, Tax Code.

SECTION 28.047. Sections 1802.055(a) and (b), Occupations Code, are amended to read as follows:

(a) An individual who establishes that the individual is eligible for an auctioneer's license may apply to the executive director [~~commissioner~~] to take the license examination. The application must be accompanied by the examination fee.

(b) On receipt of an examination application and fee, the executive director [~~commissioner~~] shall furnish the applicant with:

(1) study materials and references on which the examination will be based; and

(2) a schedule specifying the dates and places the examination will be offered.

SECTION 28.048. Sections 1802.056(b) and (c), Occupations Code, are amended to read as follows:

(b) The license examination shall be offered at least four times each year at locations designated by the executive director [~~commissioner~~].

(c) The executive director [~~commissioner~~] shall prepare:

(1) examinations for an auctioneer's license; and

(2) study and reference materials on which the examinations are based.

SECTION 28.049. Section 1802.152(a), Occupations Code, is amended to read as follows:

(a) The department is the manager of the fund and shall:

(1) administer the fund without appropriation;

(2) maintain books and records as required by the executive director [~~commissioner~~];

(3) appear at hearings or judicial proceedings; and

(4) invest and reinvest the fund's assets as instructed by the executive director [~~commissioner~~].

SECTION 28.050. Section 1802.155(b), Occupations Code, is amended to read as follows:

(b) If the fund contains insufficient assets to pay the consumer:

(1) the department shall record the time and date an order for payment to a consumer was received; and

(2) the executive director [~~commissioner~~] shall pay consumers for whom an order is recorded under Subdivision (1) as funds become available in the order of the recorded time and date of the order.

SECTION 28.051. Section 1802.156, Occupations Code, is amended to read as follows:

Sec. 1802.156. EDUCATION EXPENDITURES PERMITTED. The executive director [~~commissioner~~] may use amounts in excess of \$250,000 in the fund to:

(1) advance education and research in the auctioneering profession for the benefit of license holders and to improve and increase the efficiency of the industry;

(2) underwrite educational seminars, training centers, and other educational projects for the use and benefit of license holders;

(3) sponsor, contract, and underwrite other educational and research projects that advance the auctioneering profession in this state; and

(4) cooperate with associations of auctioneers and other groups for the education and advancement of the auctioneering profession in this state.

SECTION 28.052. Sections 1802.205(a) and (b), Occupations Code, are amended to read as follows:

(a) If the department's determination under Section 1802.202 is not disputed by the auctioneer or the aggrieved party, the executive director [~~commissioner~~] shall pay the claim from the fund, subject to Section 1802.206.

(b) If a hearing is held on the department's determination, the executive director [~~commissioner~~] shall pay to the aggrieved party the amount of actual damages determined by the executive director [~~commissioner~~].

SECTION 28.053. Section 1802.206(a), Occupations Code, is amended to read as follows:

(a) The executive director [~~commissioner~~] may not pay a single aggrieved party more than \$10,000.

SECTION 28.054. Section 1802.208, Occupations Code, is amended to read as follows:

Sec. 1802.208. SUBROGATION. If the executive director [~~commissioner~~] pays a claim against an auctioneer, the department is subrogated to all rights of the aggrieved party against the auctioneer to the extent of the amount paid to the aggrieved party.

SECTION 28.055. Section 1901.051(b), Occupations Code, is amended to read as follows:

(b) The executive director [~~commissioner~~] shall issue licenses to applicants who qualify.

SECTION 28.056. Section 1901.151, Occupations Code, is amended to read as follows:

Sec. 1901.151. LICENSE REQUIRED. A person may not act or offer to act as a driller unless the person holds a license issued by the executive director [~~commissioner~~] under this chapter and rules adopted under this chapter.

SECTION 28.057. Section 1901.402, Occupations Code, is amended to read as follows:

Sec. 1901.402. INJUNCTION AND OTHER ENFORCEMENT PROVISIONS.

(a) The executive director [~~commissioner~~] may bring an action to enjoin a person from violating this chapter.

(b) The executive director [~~commissioner~~] may enforce by injunction or other appropriate remedy in a court any rule, decision, determination, or order adopted or entered under this chapter.

SECTION 28.058. Section 1901.403, Occupations Code, is amended to read as follows:

Sec. 1901.403. VENUE. The executive director [~~commissioner~~] may bring an action in:

- (1) Travis County; or
- (2) the county in which:
  - (A) the offending activity occurred; or
  - (B) the person engaging in the activity resides.



SECTION 28.059. Section 1901.404(b), Occupations Code, is amended to read as follows:

(b) At the request of the executive director [~~commissioner~~], the attorney general shall bring an action in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty, as authorized by this subchapter.

SECTION 28.060. Section 1902.151, Occupations Code, is amended to read as follows:

Sec. 1902.151. LICENSE REQUIRED. A person may not act or offer to act as an installer unless the person holds a license issued by the executive director [~~commissioner~~] under rules adopted under this chapter.

SECTION 28.061. Section 1902.402, Occupations Code, is amended to read as follows:

Sec. 1902.402. INJUNCTION AND OTHER ENFORCEMENT PROVISIONS.

(a) The executive director [~~commissioner~~] may bring an action to enjoin a person from violating this chapter.

(b) The executive director [~~commissioner~~] may enforce by injunction or other appropriate remedy in a court any rule, decision, determination, or order adopted or entered under this chapter.

SECTION 28.062. Section 1902.403, Occupations Code, is amended to read as follows:

Sec. 1902.403. VENUE. The executive director [~~commissioner~~] may bring an action in:

- (1) Travis County; or
- (2) the county in which:
  - (A) the offending activity occurred; or
  - (B) the person engaging in the activity resides.

SECTION 28.063. Section 1902.404(b), Occupations Code, is amended to read as follows:

(b) At the request of the executive director [~~commissioner~~], the attorney general shall bring an action in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty, as authorized by this subchapter.

SECTION 28.064. Section 2052.053, Occupations Code, is amended to read as follows:

Sec. 2052.053. INVESTIGATIVE AUTHORITY. (a) The executive director [~~commissioner~~] shall investigate allegations of activity that may violate this chapter.

(b) The executive director [~~commissioner~~] may enter, at a reasonable time, a place of business or an establishment in which activity alleged to violate this chapter may occur. The executive director [~~commissioner~~] is not required to give advance notice before entering.

SECTION 28.065. Section 2052.102, Occupations Code, is amended to read as follows:

Sec. 2052.102. BOXING PROMOTER LICENSE APPLICATION REQUIREMENTS. (a) An applicant for a boxing promoter's license under this chapter must apply on a form furnished by the executive director [~~commissioner~~].

(b) An application must be accompanied by:

- (1) a license fee in an amount set by the commission; and
- (2) a surety bond:

(A) subject to approval by the executive director [~~commissioner~~]; and

(B) conditioned on the applicant's payment of the tax imposed under

Section 2052.151.

(c) The executive director [~~commissioner~~] shall establish the amount of the surety bond required under Subsection (b). The bond amount may not be less than \$300.

SECTION 28.066. Section 2052.108(a), Occupations Code, is amended to read as follows:

(a) An application for a license under Section 2052.107 must be made on a form furnished by the executive director [~~commissioner~~].

SECTION 28.067. Section 2052.110, Occupations Code, is amended to read as follows:

Sec. 2052.110. LICENSE AND BONDING EXCEPTIONS. The licensing and bonding requirements of this subchapter do not apply to:

(1) a boxing event in which the participants do not receive a money remuneration, purse, or prize for their performances or services if the event is promoted, conducted, or maintained by:

(A) an educational institution;

(B) a law enforcement organization;

(C) a Texas National Guard Unit; or

(D) an amateur athletic organization recognized by the executive director [~~commissioner~~];

(2) a nonprofit amateur athletic association chartered under the law of this state, including a membership club affiliated with the association located within this state and recognized by the executive director [~~commissioner~~];

(3) an event conducted by a college, school, or university that is part of the institution's athletic program in which only students of different educational institutions participate; or

(4) an event in which only members of a troop, battery, company, or unit of the Texas National Guard or a law enforcement agency participate.

SECTION 28.068. Section 2052.111, Occupations Code, is amended to read as follows:

Sec. 2052.111. DENIAL OF APPLICATION. The executive director [~~commissioner~~] may deny an application for a license if:

(1) the applicant does not meet the qualifications for the license; or

(2) after conducting an investigation and a hearing, the executive director [~~commissioner~~] determines that the applicant has violated this chapter or a rule adopted under this chapter.

SECTION 28.069. Section 2052.203(b), Occupations Code, is amended to read as follows:

(b) The elimination tournament boxing promoter of a local, regional, or championship elimination tournament is not required to require that each elimination tournament contestant wear headgear approved by the department if the promoter under department rules notifies the executive director [~~commissioner~~] of the decision not to use the approved headgear.

SECTION 28.070. Sections 2052.252(b) and (e), Occupations Code, are amended to read as follows:

(b) The event may take place only if the executive director [~~commissioner~~] approves the event not later than seven days before the date the event begins.

(e) The event is subject to the supervision of the executive director [~~commissioner~~].

SECTION 28.071. Section 2052.302, Occupations Code, is amended to read as follows:

Sec. 2052.302. FORFEITURE OF PURSE. The executive director [~~commissioner~~] may order a boxer or manager to forfeit to this state a purse in an amount of not more than \$1,000 for violating this chapter or a rule adopted under this chapter.

SECTION 28.072. Sections 2052.304(a) and (b), Occupations Code, are amended to read as follows:

(a) A person may seek review of a decision or an order of the executive director [~~commissioner~~] under this chapter by filing a petition for review in a district court in Travis County not later than the 30th day after the date on which the decision or order of the executive director [~~commissioner~~] is final if the person is:

(1) a party to an administrative hearing in which the decision or order is issued; and

(2) aggrieved by the decision or order.

(b) The filing of a petition for review under Subsection (a) does not stay the effect of the decision or order of the executive director [~~commissioner~~] that is the subject of the petition. The executive director [~~commissioner~~] or the district court in which the petition for review is filed may order a stay on appropriate terms.

SECTION 28.073. Section 2052.305, Occupations Code, is amended to read as follows:

Sec. 2052.305. SERVICE OF PROCESS. A petition for review filed under Section 2052.304 must be served on:

(1) the executive director [~~commissioner~~]; and

(2) all parties of record to a hearing before the executive director [~~commissioner~~] that relates to the matter for which the petition for review is filed.

SECTION 28.074. Section 2052.306(a), Occupations Code, is amended to read as follows:

(a) On receipt of a petition for review served under Section 2052.305, the executive director [~~commissioner~~], not later than the date on which the answer to the petition must be filed or the date on which the record is made available to the executive director [~~commissioner~~], whichever date is later, shall certify to the district court in which the petition is filed the record of the proceedings to which the petition relates.

SECTION 28.075. Section 2052.307, Occupations Code, is amended to read as follows:

Sec. 2052.307. JUDICIAL REVIEW. (a) A district court reviewing a decision or an order of the executive director [~~commissioner~~] under this subchapter shall try the action without a jury in the same manner as a civil action, except that evidence is not admissible unless the evidence was presented at the hearing or noticed in the record of the hearing before the executive director [~~commissioner~~]. The petitioner has the burden of proof in the action.

(b) The court may:

- (1) affirm the decision or order of the executive director [~~commissioner~~]; or
- (2) remand the matter to the executive director [~~commissioner~~] for further proceedings.

SECTION 28.076. Section 2052.308, Occupations Code, is amended to read as follows:

Sec. 2052.308. APPEAL. (a) The petitioner or executive director [~~commissioner~~] may appeal a final judgment of a court conducting a review under this subchapter in the same manner as a civil action.

(b) The executive director [~~commissioner~~] is not required to file an appeal bond.

SECTION 28.077. Section 2151.101(a), Occupations Code, is amended to read as follows:

(a) A person may not operate an amusement ride unless the person:

(1) has had the amusement ride inspected at least once a year by an insurer or a person with whom the insurer has contracted;

(2) obtains a written certificate from the insurer or person with whom the insurer has contracted stating that the amusement ride:

(A) has been inspected;

(B) meets the standards for insurance coverage; and

(C) is covered by the insurance required by Subdivision (3);

(3) has an insurance policy currently in effect written by an insurance company authorized to do business in this state or by a surplus lines insurer, as defined by Chapter 981 [~~Article 1.14-2~~], Insurance Code, or has an independently procured policy subject to Chapter 101 [~~Article 1.14-1~~], Insurance Code, insuring the owner or operator against liability for injury to persons arising out of the use of the amusement ride in an amount of not less than:

(A) \$100,000 per occurrence with a \$300,000 annual aggregate for Class A amusement rides; and

(B) \$1,000,000 per occurrence for Class B amusement rides;

(4) files with the executive director [~~commissioner~~], as required by this chapter, the inspection certificate and the insurance policy or a photocopy of the certificate or policy authorized by the executive director [~~commissioner~~]; and

(5) files with each sponsor, lessor, landowner, or other person responsible for the amusement ride being offered for use by the public a photocopy of the inspection certificate and the insurance policy required by this subsection.

SECTION 28.078. Section 2501.053(a), Occupations Code, is amended to read as follows:

(a) Not later than the 30th day before the date a personnel service begins operating in this state, the owner of the service must file notice with the executive director [~~commissioner~~].

SECTION 28.079. Section 2501.055(a), Occupations Code, is amended to read as follows:

(a) On receipt of a notice filed under Section 2501.053, the executive director [~~commissioner~~] shall issue to the owner a certificate of authority to do business as a personnel service not later than the 15th day after the date the notice is filed if the owner:

- (1) pays the filing fee required for the certificate; and
- (2) complies with the requirements of Section 2501.054.

SECTION 28.080. Section 2501.057, Occupations Code, is amended to read as follows:

Sec. 2501.057. RENEWAL OF CERTIFICATE. The executive director [~~commissioner~~] shall issue a renewal of a certificate of authority on the receipt of:

- (1) a renewal notice from the owner that contains the information required by Section 2501.053;
- (2) a renewal fee; and
- (3) security that complies with Section 2501.054.

SECTION 28.081. The heading to Subchapter D, Chapter 2501, Occupations Code, is amended to read as follows:

SUBCHAPTER D. ENFORCEMENT [~~BY COMMISSIONER~~]

SECTION 28.082. Section 2501.151, Occupations Code, is amended to read as follows:

Sec. 2501.151. ENFORCEMENT. (a) The executive director [~~commissioner~~] shall enforce Section 2501.102 and may investigate a personnel service as necessary to enforce that section.

(b) The attorney general shall assist the executive director [~~commissioner~~] on request.

SECTION 28.083. Section 2501.253(a), Occupations Code, is amended to read as follows:

(a) In addition to the amount awarded to a complainant under Section 2501.154(b), the executive director [~~commissioner~~] may impose on the personnel service an administrative penalty equal to two times the amount awarded under that subsection. A penalty collected under this section shall be deposited in the state treasury.

SECTION 28.084. Sections 2502.052(a) and (b), Occupations Code, are amended to read as follows:

(a) To obtain a certificate of authority, an owner must:

- (1) file with the executive director [~~commissioner~~] a sworn application accompanied by the required application fee; and
- (2) file with the department security that complies with Section 2502.053.

(b) The application must be in the form prescribed by the executive director [~~commissioner~~] and include:

- (1) the address of the principal location of the career counseling service;

- (2) the assumed name, if any, under which the career counseling service will operate;
- (3) the name and address of each owner; and
- (4) a statement that the owner has read and is familiar with this chapter.

SECTION 28.085. Section 2502.053(a), Occupations Code, is amended to read as follows:

(a) Before the executive director [~~commissioner~~] may issue a certificate of authority to an owner, the owner must file with the department a bond in the amount of \$10,000 that is:

- (1) executed by a surety company authorized to do business in this state;
- (2) payable to the state; and
- (3) conditioned on the faithful performance of the owner's obligations under this chapter.

SECTION 28.086. Sections 2502.054(a) and (b), Occupations Code, are amended to read as follows:

(a) The executive director [~~commissioner~~] shall issue a certificate of authority to do business as a career counseling service to an applicant who meets the requirements of this subchapter.

(b) The executive director [~~commissioner~~] shall process a certificate application not later than the 15th day after the date the application is filed.

SECTION 28.087. Section 2502.251, Occupations Code, is amended to read as follows:

Sec. 2502.251. ENFORCEMENT. (a) The executive director [~~commissioner~~] shall enforce this chapter and may investigate a career counseling service as necessary.

(b) The attorney general shall assist the executive director [~~commissioner~~] on request.

SECTION 28.088. Section 2502.301, Occupations Code, is amended to read as follows:

Sec. 2502.301. ADMINISTRATIVE PENALTY. In addition to the amount awarded to a complainant under Section 2502.254(b), the executive director [~~commissioner~~] may impose on the career counseling service an administrative penalty equal to two times the amount awarded under that subsection. A penalty collected under this section shall be deposited in the state treasury.

SECTION 28.089. Section 7(a), Article 9035, Revised Statutes, is amended to read as follows:

(a) To ensure the adequate performance of a warrantor's obligations to a consumer, each warrantor shall comply with financial security requirements by:

- (1) insuring its vehicle protection products under a reimbursement insurance policy issued by an insurer authorized to engage in the business of insurance in this state or under a surplus lines insurance policy issued by an insurer eligible to place coverage in this state as regulated under Chapter 981 [~~Article 1.14-2~~], Insurance Code; or

- (2) providing any other form of comparable financial security approved by the executive director [~~commissioner~~].

SECTION 28.090. Section 1.14, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.14. PERSONNEL. The executive director [~~commissioner~~] may, as provided by the General Appropriations Act, appoint and fix the compensation of any personnel, including specialists and consultants, necessary to perform duties and functions under this article.

SECTION 28.091. Section 1.41(e), Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) On written request of at least 25 qualified voters residing in the target area or operational area mentioned in the notice requesting an election accompanied by unsigned petitions, the county clerk of each county within the target area or operational area shall certify and mark for identification petitions for circulation. An application for a petition seeking an election to disapprove the issuance of a permit must be headed: "Application for Election to Disapprove a Weather Modification Permit." The application shall contain a statement just ahead of the signatures of the applicants stating the following: "It is the hope, purpose, and intent of the applicants whose signatures appear on this application to see disapproved the issuance of a permit for weather modification, including hail suppression." An application for a petition seeking an election to approve the issuance of a permit shall be headed: "Application for Election to Approve a Weather Modification Permit." The application shall contain a statement just ahead of the signatures of the applicants as follows: "It is the hope, purpose, and intent of the applicants whose signatures appear on this petition to see approved the issuance of a permit for weather modification, including hail suppression." On the return to the county clerks of petitions signed by at least 10 percent of the qualified voters residing in each county within the target area or operational area in the notice requesting an election, the commissioners court of each county shall call and hold an election. Notice under Chapter 111, Local Government Code, of the commissioners court meeting to call and hold the election is not required. The date of the election shall be determined by the commissioners court in accordance with this section, notwithstanding Sections 41.004 and 41.0041, Election Code. The petition must be filed with the clerk of each county within 30 days immediately following the first publication of notice. The election must be held within 45 days after the date the petition is received to determine whether or not the qualified voters in the target area or operational area approve the issuance of the permit. Immediately on calling the election, the clerk of each county within the target area or operational area shall notify the executive director [~~commissioner~~] of the date of the election. Except as otherwise provided in this article, elections must be held in accordance with the Election Code.

SECTION 28.092. The changes in law made by this article to Section 755.024, Health and Safety Code, regarding the terminology used to identify a commission or license issued by the Texas Department of Licensing and Regulation, do not affect the validity of a commission or license issued by the department under that section.

## ARTICLE 29. GENERAL TRANSITION; EFFECTIVE DATE

SECTION 29.001. The changes in law made by this Act regarding the powers and duties of the executive director of the Texas Department of Licensing and Regulation that are transferred to the Texas Commission of Licensing and Regulation do not affect the status of a complaint, investigation, or other proceeding. A rule or form adopted by the executive director before the effective date of this Act remains in effect as a rule or form of the department until amended or changed.

SECTION 29.002. This Act takes effect September 1, 2003.

**Floor Amendment No. 1**

Amend **CSSB 279** on page 1, lines 4-5, by striking "the Texas Department of Insurance and".

**Floor Amendment No. 2**

Amend **CSSB 279** on page 17 by striking lines 9-16.

**Floor Amendment No. 3**

Amend **CSSB 279** (House committee report) in SECTION 3.005 of the bill (page 26, lines 5-19) by striking added Section 9, Article 9102, Revised Statutes, and substituting a new Section 9 to read as follows:

Sec. 9. COMPLAINTS. (a) The department shall continue to monitor a complaint made under Section 51.252, Occupations Code, that alleges that a building or facility is not in compliance with the standards and specifications adopted by the commission under this article until the department determines that:

(1) the building or facility has been brought into compliance; or

(2) the building or facility is not required to be brought into compliance because of a rule or statute, including Section 2(c) of this article.

(b) If the building or facility is not required to be brought into compliance, the department shall, on final disposition of the complaint, notify in writing the person filing the complaint that the building or facility is not required to be brought into compliance because of a rule or statute and provide a reference to the rule or statute.

(c) The department, at least quarterly and for as long as the department continues to monitor the complaint under Subsection (a) of this section, shall notify the person filing the complaint of the status of the monitoring.

**Floor Amendment No. 4**

Amend **CSSB 279** by striking Articles 5, 10, 21, 23, and 27 of the bill.

**Floor Amendment No. 5**

Amend **CSSB 279** as follows:

(1) On page 65, strike lines 18-19 and substitute:

SECTION 12.002. Section 1202.003, Occupations Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(2) On page 65, strike lines 26-27 and substitute:

the module or the modular component is transported to the commercial [~~permanent~~] site and erected or installed [~~on a permanent foundation system~~].



(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.

(3) On page 66, line 27, strike "or 1202.206".

(4) On page 69, between lines 25 and 26, insert:

SECTION 12.013. Section 1202.205, Occupations Code, is amended to read as follows:

Sec. 1202.205. RECIPROCITY. (a) The commission [~~commissioner~~] by rule may authorize an inspection of industrialized housing or buildings constructed in another state to be performed by an inspector of the equivalent regulatory agency of the other state.

(b) The commission [~~commissioner~~] by rule may authorize an inspection of industrialized housing or buildings constructed in this state for use in another state.

(c) The commission [~~commissioner~~] shall enter into a reciprocity agreement with the equivalent regulatory agency of the other state as necessary to implement this section.

(5) Renumber the sections of Article 12 of the bill accordingly.

(6) On page 86, line 2, between "commission" and "[~~commissioner~~]", insert ", with the commission's approval,".

(7) On page 104, line 10, between "commission" and "[~~commissioner~~]", insert ", with the commission's approval,".

(8) On page 104, line 27, between "commission" and "[~~commissioner~~]", insert ", with the commission's approval,".

(9) On page 105, line 6, between "commission" and "[~~commissioner~~]", insert ", with the commission's approval,".

(10) On page 113, line 7, between "commission" and "[~~council~~]", insert ", with the commission's approval,".

(11) Strike page 162, line 25 through page 164, line 5.

(12) Strike page 169, line 27 through page 170, line 5.

(13) Renumber the sections of Article 28 of the bill accordingly.

### **Floor Amendment No. 7**

Amend **CSSB 279** by adding an appropriately numbered ARTICLE and renumbering the subsequent ARTICLES of the bill appropriately:

#### ARTICLE 28. RENTAL-PURCHASE AGREEMENTS

SECTION 1. Section 35.71, Business & Commerce Code, is amended by adding Subdivisions (3-a) to read as follows:

(3-a) "Loss damage waiver" means a merchant's agreement not to hold a consumer liable for loss from all or part of any damage to merchandise.

SECTION 2. Section 35.72(c), Business & Commerce Code, is amended to read as follows:

(c) A rental-purchase agreement may not contain a provision:

(1) requiring a confession of judgment;

(2) authorizing a merchant or an agent of the merchant to commit a breach of the peace in the repossession of the merchandise;

(3) waiving a defense, counterclaim, or right the consumer may have against the merchant or an agent of the merchant;

(4) requiring the purchase of insurance or a loss damage waiver from the merchant to cover the merchandise;

(5) requiring the payment of a late charge or reinstatement fee unless a periodic payment is delinquent for more than seven days if the payment is due monthly, or is delinquent for more than three days if the payment is due more frequently than monthly, and the charge or fee is in an amount equal to not more than the lesser of five percent of the delinquent payment or \$5, and not less than \$2; or

(6) requiring a payment at the end of the scheduled rental-purchase term in excess of or in addition to a regular periodic payment in order to acquire ownership of the merchandise. In no event shall the consumer be required to pay a sum greater than the total amount to be paid to acquire ownership, as directed in Subsection (g)(3) of this section.

SECTION 3. Subchapter F, chapter 35, Business & Commerce Code, is amended by adding Section 35.721 to read as follows:

Sec. 35.721. LOSS DAMAGE WAIVER. (a) In addition to other charges permitted by this subchapter, a consumer may contract for a loss damage waiver. A loss damage waiver is not insurance.

(b) A merchant may not sell a loss damage waiver unless the consumer agrees to the waiver in writing. A merchant may not impose or require the purchase of a loss damage waiver as a mandatory charge.

(c) A loss damage waiver may exclude loss or damage to the merchandise that is caused by an unexplained disappearance or abandonment of the merchandise, or any other damage that is intentionally caused by the consumer or that results from the consumer's wilful or wanton misconduct.

(d) A loss damage waiver agreement must include a statement of the total charge for the loss damage waiver.

(e) A merchant may charge a periodic fee for a loss damage waiver that may not exceed 10 percent of the periodic rental payment.

(f) A contract that offers a loss damage waiver must include the following notice:

"This contract offers an optional loss damage waiver for a additional charge to cover your responsibility for loss of or damage to the merchandise. You do not have to purchase this coverage. Before deciding whether or not to purchase this loss damage waiver, you may consider whether your homeowners' or casualty insurance policy affords you coverage for loss of or damage to rental merchandise and the amount of the deductible you would pay under your policy."

(g) a merchant may not sell a loss damage waiver unless the form of the contract containing the waiver has been approved by the Texas Department of Licensing and Regulation.

(h) The Texas Commission of Licensing and Regulation shall by rule:

(1) provide for annual submission of ~~a~~ all contract forms, and all amendments to contract forms, containing a loss damage waiver for review; and

(2) establish a reasonable fee to be paid by the merchant for the review of contract forms and for Texas Department of Licensing and Regulation administration of this subchapter.

SECTION 4. Subchapter F, Chapter 35, Business and Commerce Code, is amended by adding Section 35.722 to read as follows:

Section 35.722 ENFORCEMENT; INVESTIGATION; HEARING.

(a) The Executive Director of the Texas Department of Licensing and Regulation shall enforce Section 35.721 and may investigate any merchant who has one or more contracts that include loss damage waivers as necessary.

(b) A person may file a complaint alleging a violation of Section 35.721 with the Executive Director of the Texas Department of Licensing and Regulation, who shall investigate the alleged violation on receipt of the complaint, and may inspect any records relevant to the complaint.

(c) If, as a result of an investigation, the Executive Director of the Texas Department of Licensing and Regulation determines that a violation may have occurred, an opportunity for a hearing shall be provided pursuant to the provisions of the Administrative Procedure Act, Gov't Code, Chapter 2001.

(d) If, after opportunity for hearing, the Texas Commission of Licensing and Regulation determines that the merchant has violated Section 35.721, the Commission may, as appropriate:

(1) impose an administrative penalty pursuant to Occupations Code, Chapter 51, Subchapter F, ad

(2) award the complaint damages in an amount up to the amount of the contract price for the merchandise.

SECTION 5. The change in law made by this article applies only to a rental-purchase agreement entered into on or after the effective date of this Act. A rental-purchase agreement entered into before the effective date of this Act is governed by the law in effect on the date on which the rental-purchase agreement was entered into, and the former law is continued in effect for that purpose.

### **Floor Amendment No. 8**

Amend **CSSB 279** by adding the following appropriately numbered sections to the bill and renumbering subsequent sections accordingly:

SECTION 29. Subchapter I, Chapter 2054, Government Code, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001, is amended by adding Sections 2054.255 and 2054.256 to read as follows:

Sec. 2054.255. CHANGE OF ADDRESS AND OTHER INFORMATION. (a) The system adopted under Section 2054.253, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001, must allow a person regulated by one or more licensing authorities to file a single change of address on-line with the department. The department shall provide the new address to each appropriate licensing authority.

(b) The department may expand the system to include additional categories of updated information that license holders may need to provide to more than one licensing authority.

(c) If the department uses TexasOnline to implement the system, the department may recover costs incurred under this section as provided by Section 2054.252, as added by Chapter 342, Acts of the 77th Legislature, Regular Session, 2001.

Sec. 2054.256. SHARING OF INFORMATION. (a) Each licensing authority shall electronically share information regarding license holders, especially information regarding disciplinary information, with other licensing authorities to the extent it is feasible to do so and allowed by other law, under appropriate controls for the privacy, security, accuracy, and, when applicable, confidentiality of the information.

(b) A licensing authority may only use information it receives electronically under this section for regulatory purposes.

SECTION 30. This Act takes effect September 1, 2003.

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

Amend **CSSB 279** in Article 3 of the bill by adding the following new SECTION, appropriately numbered, and renumbering subsequent SECTIONS of Article 3 appropriately:

SECTION \_\_\_\_\_. Section 2, Article 9102, Revised Statutes, is amended by adding Subsection (h) to read as follows:

(h) If any portion of a building described by Subsection (a)(1) of this section is occupied solely for residential use and the remaining occupied portion of the building is occupied for nonresidential use, the executive director shall consider only the nonresidential portion of the building in determining whether the building complies with the standards and specifications adopted under this article.

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

Amend **CSSB 279** by striking Article 11 of the bill (House committee printing, page 54, line 8, through page 65, line 4) and substituting the following:

#### ARTICLE 11. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

SECTION 11.01. Subchapter B, Chapter 754, Health and Safety Code, is amended to read as follows:

#### SUBCHAPTER B. INSPECTION, ~~AND~~ CERTIFICATION, AND REGISTRATION

Sec. 754.011. DEFINITIONS. In this subchapter:

(1) "Acceptance inspection" means an inspection performed at the completion of the initial installation or alteration of equipment and in accordance with the applicable ASME Code A17.1.

(2) "Accident" means an event involving equipment that results in death or serious bodily injury to a person.

(3) "Alteration" means a change in or modernization of existing equipment. The term does not include maintenance, repair, replacement, or a cosmetic change that does not affect the operational safety of the equipment or diminish the safety of the equipment below the level required by the ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable, at the time of alteration.

(4) "Annual inspection" means an inspection of equipment performed in a 12-month period in accordance with the applicable ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21. The term includes an acceptance inspection performed within that period.

(5) "ASCE Code 21" means the American Society of Civil Engineers Code 21 for people movers operated by cables.

(6) "ASME Code A17.1" means the American Society of Mechanical Engineers Safety Code for Elevators and Escalators A17.1.

(6-a) "Executive director" means the executive director of the department.

(7) [~~2~~] "ASME Code A17.3" means the 2002 American Society of Mechanical Engineers Safety Code for Elevators and Escalators A17.3.

(8) "ASME Code A18.1" means the American Society of Mechanical Engineers Safety Code for Platform Lifts and Stairway Chairlifts A18.1.

(9) [~~3~~] "Board" means the elevator advisory board.

(10) [~~4~~] "Commission" means the Texas Commission of Licensing and Regulation.

(11) [~~5~~] "Commissioner" means the commissioner of licensing and regulation.

(12) "Contractor" means a person engaged in the installation, repair, or maintenance of equipment. The term does not include an employee of a contractor or a person engaged in cleaning or any other work performed on equipment that does not affect the operational safety of the equipment or diminish the safety of the equipment below the level required by the ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable.

(13) [~~6~~] "Department" means the Texas Department of Licensing and Regulation.

(14) "Equipment" means an elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

(15) "Industrial facility" means a facility to which access is primarily limited to employees or contractors working in that facility.

(16) [~~7~~] "Qualified historic building or facility" means a building or facility that is:

(A) listed in or eligible for listing in the National Register of Historic Places; or

(B) designated as a Recorded Texas Historic Landmark or State Archeological Landmark.

(17) [~~8~~] "Related equipment" means:

(A) automatic equipment that is used to move a person in a manner that is similar to that of an elevator, ~~an~~ [~~or~~] escalator, a chairlift, a platform lift, an automated people mover operated by cables, or [~~and includes~~] a moving sidewalk; and

(B) hoistways, pits, and machine rooms for equipment.

(18) "Serious bodily injury" means a major impairment to bodily function or serious dysfunction of any bodily organ or part requiring medical attention.

(19) "Unit of equipment" means one elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

Sec. 754.0111. EXEMPTION. (a) This subchapter does not apply to [~~an~~ elevator, escalator, or related] equipment in a private building for a labor union, trade association, private club, or charitable organization that has two or fewer floors.

(b) This subchapter does not apply to an elevator located in a single-family dwelling, except as provided by Section 754.0141.

Sec. 754.012. ELEVATOR ADVISORY BOARD. (a) The elevator advisory board is composed of nine members appointed by the presiding officer of the commission [~~commissioner~~] as follows:

(1) a representative of the insurance industry or a certified elevator inspector;

(2) a representative of [~~elevator, escalator, and related~~] equipment constructors;

(3) a representative of owners or managers of a building [~~buildings~~] having fewer than six stories and having [~~an elevator, an escalator, or related~~] equipment;

(4) a representative of owners or managers of a building [~~buildings~~] having six stories or more and having [~~an elevator, an escalator, or related~~] equipment;

(5) a representative of independent [~~elevator, escalator, and related~~] equipment maintenance companies;

(6) a representative of [~~elevator, escalator, and related~~] equipment manufacturers;

(7) a licensed or registered engineer or architect [~~representative of professional engineers or architects~~];

(8) a public member; and

(9) a public member with a physical disability.

(b) Board members serve at the will of the commission [~~commissioner~~].

(c) The presiding officer of the commission [~~commissioner~~] shall appoint a presiding officer of the board to serve for two years.

(d) The board shall meet at least twice each calendar year.

(e) A board member serves without compensation but is entitled to reimbursement for travel as provided for in the General Appropriations Act [~~and other necessary expenses incurred in performing duties under this subchapter~~].

Sec. 754.013. BOARD DUTIES. To protect public safety and to identify and correct potential hazards, the board shall advise the commission [~~commissioner~~] on:

(1) the adoption of appropriate standards for the installation, alteration, operation, and inspection of [~~elevators, escalators, and related~~] equipment;

(2) the status of [~~elevators, escalators, and related~~] equipment used by the public in this state; [~~and~~]

(3) sources of information relating to equipment safety;

(4) public awareness programs related to elevator safety, including programs for sellers and buyers of single-family dwellings with elevators, chairlifts, or platform lifts; and

(5) any other matter considered relevant by the commission [~~commissioner~~].

Sec. 754.014. STANDARDS ADOPTED BY COMMISSION [~~COMMISSIONER~~]. (a) The commission [~~commissioner~~] shall adopt standards for the installation, maintenance, alteration, operation, and inspection of [~~elevators, escalators, and related~~] equipment used by the public in:

(1) buildings owned or operated by the state, a state-owned institution or agency, or a political subdivision of the state; and

(2) buildings that contain [~~an elevator, an escalator, or related~~] equipment that is open to the general public, including a hotel, motel, apartment house, boardinghouse, church, office building, shopping center, or other commercial establishment.

(b) Standards adopted by the commission [~~commissioner~~] may not contain requirements in addition to the requirements in the ASME Code A17.1, ~~[or]~~ ASME Code A17.3, ASME Code A18.1, or ASCE Code 21. The standards must allow alteration of existing equipment if the alteration does not diminish the safety of the equipment below the level required by this subchapter at the time of alteration.

(c) Standards adopted by the commission [~~commissioner~~] must require [~~elevators, escalators, and related~~] equipment to comply with the installation requirements of the [~~following, whichever is the least restrictive:~~

~~[(1) the] ASME Code A17.1, ASME Code A18.1, or ASCE Code 21 that was in effect and applicable on the date of installation of the [elevators, escalators, and related] equipment[; or~~

~~[(2) an applicable municipal ordinance governing the installation of elevators, escalators, and related equipment that was in effect on the date of installation].~~

(d) Standards adopted by the commission [~~commissioner~~] must require [~~elevators, escalators, and related~~] equipment to comply with the installation requirements of the [~~1994~~] ASME Code A17.3 that contains minimum safety standards for all [~~elevators, escalators, and related~~] equipment, regardless of the date of installation.

(e) The executive director [~~On written request, the commissioner~~] shall grant a delay for compliance with the applicable ASME Code A17.1, ~~[or the 1994] ASME Code A17.3, or ASME Code A18.1~~ until a specified time if compliance is not readily achievable, as that phrase is defined in the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.), or regulations adopted under that Act. The accumulated total time of all delays may not exceed three years, except as provided by Subsection (f) or as allowed in the discretion of the executive director.

(f) The executive director [~~On written request, the commissioner~~] shall grant a delay until September 1, 2005, for compliance with the requirements for door restrictors or firefighter's service in the [~~1994~~] ASME Code A17.3 if those requirements were not included in the ASME Code A17.1 that was in effect on the date of installation [~~of the elevator, escalator, or related equipment]~~ and the [that] equipment was not subsequently installed [~~by an owner of the elevator, escalator, or related equipment]~~.

(g) The executive director [~~commissioner~~] may grant a waiver of compliance from an applicable code requirement [~~with the applicable ASME Code A17.1 or the 1994 ASME Code A17.3]~~ if the executive director [~~commissioner~~] finds that:

(1) the building in which the [~~elevator, escalator, or related~~] equipment is located is a qualified historic building or facility or the noncompliance is due to structural components of the building; [~~and]~~

(2) noncompliance will not constitute a significant threat to passenger safety; and

(3) noncompliance, with adequate alternative safeguards, will not constitute a significant threat to worker safety.

(h) The executive director shall grant a waiver of compliance if the noncompliance resulted from compliance with a municipal equipment construction code at the time of the original installation and the noncompliance does not pose imminent and significant danger. The executive director [commissioner] may grant a waiver of compliance with the firefighter's service provisions of the ASME Code A17.1 or the [1994] ASME Code A17.3 in an elevator that exclusively serves a vehicle parking garage in a building that:

- (1) is used only for parking;
- (2) is constructed of noncombustible materials; and
- (3) is not greater than 75 feet in height.

(i) This subchapter does not apply to [an elevator, an escalator, or related] equipment in an industrial facility, or in a grain silo, radio antenna, bridge tower, underground facility, or dam, to which access is limited primarily [principally] to employees of or working in that facility or structure.

(j) [The commissioner may charge a reasonable fee as set by the commission for an application for waiver or delay.] One application for a waiver or delay may contain all requests related to a unit of equipment [particular building]. A delay may not be granted indefinitely but must be granted for [to] a specified time not to exceed three years.

(k) For purposes of this section, the date of installation or alteration of equipment is the date that the owner of the real property entered into a contract for the installation or alteration of the [purchase of the elevators, escalators, or related] equipment. If that date cannot be established, the date of installation or alteration is the date of issuance of the municipal building permit under which the [elevators, escalators, or related] equipment was installed or altered [constructed] or, if a municipal building permit was not issued, the date that electrical consumption began for the construction of the building in which the [elevators, escalators, or related] equipment was installed.

Sec. 754.0141. STANDARDS FOR EQUIPMENT IN SINGLE-FAMILY DWELLINGS; REQUIRED INFORMATION. (a) Elevators, chairlifts, or platform lifts installed in a single-family dwelling on or after January 1, 2004, must comply with the ASME Code A17.1 or A18.1, as applicable, and must be inspected by a QEI-1 certified inspector after the installation is complete. The inspector shall provide the dwelling owner a copy of the inspection report.

(b) The commission shall, before January 1, 2004, adopt rules containing minimum safety standards that must be used by QEI-1 certified inspectors when inspecting elevators, chairlifts, and platform lifts installed in single-family dwellings.

(c) A municipality may withhold a certificate of occupancy for a dwelling or for the installation of the elevator or chairlift until the owner provides a copy of the QEI-1 inspection report to the municipality.

(d) A contractor is not required to report to the department any information concerning equipment in a single-family dwelling or the contractor's work on the equipment.



(e) On completing installation of equipment in a single-family dwelling, a contractor shall provide the dwelling owner with relevant information, in writing, about use, safety, and maintenance of the equipment, including the advisability of having the equipment periodically and timely inspected by a QEI-1 certified inspector.

(f) An inspection by a QEI-1 certified inspector of equipment in a single-family dwelling may be performed only at the request and with the consent of the owner. The owner of a single-family dwelling is not subject to Section 754.022, 754.023, or 754.024.

Sec. 754.015. RULES. (a) The commission [~~commissioner~~] by rule shall provide for:

(1) an annual [~~the~~] inspection and certification of the [~~once each calendar year of elevators, escalators, and related~~] equipment covered by standards adopted under this subchapter;

(2) [~~the~~] enforcement of those standards;

(3) registration [~~the certification~~] of qualified [~~persons as~~] inspectors and contractors [~~for the purposes of this subchapter~~]; [~~and~~]

(4) the form of [~~the~~] inspection documents, contractor reports, [~~report~~] and certificates [~~certificate~~] of compliance;

(5) notification to building owners, architects, and other building industry professionals regarding the necessity of annually inspecting equipment;

(6) approval of continuing education programs for registered QEI-1 certified inspectors; and

(7) standards of conduct for individuals who are registered under this subchapter.

(b) The commission [~~commissioner~~] by rule may not [~~require that~~]:

(1) require inspections of equipment to [~~inspection~~] be made more often than every 12 months, except as provided by Subsection (c) [~~once per year of elevators, escalators, and related equipment~~];

(2) require persons to post a bond or furnish insurance or to have minimum experience or education as a condition of certification or registration; [~~and~~]

(3) require building owners to submit to the department proposed plans for equipment installation or alteration; or

(4) prohibit a QEI-1 certified inspector who is registered with the department from inspecting equipment.

(c) The commission by rule may require a reinspection or recertification of equipment if the equipment has been altered and poses a significant threat to passenger or worker safety or if an annual inspection report indicates an existing violation has continued longer than permitted in a delay granted by the executive director.

(d) The executive director may charge a reasonable fee as set by the commission for:

(1) registering or renewing registration of an inspector;

(2) registering or renewing registration of a contractor;

(3) applying for a certificate of compliance;

(4) filing an inspection report as required by Section 754.019(a)(3), 30 days or more after the date the report is due, for each day the report remains not filed after the date the report is due;

(5) applying for a waiver or delay; and

(6) attending a continuing education program sponsored by the department for registered QEI-1 inspectors [inspection reports or certificates of compliance be placed in locations other than one provided in Section 754.019(4)].

Sec. 754.016. INSPECTION REPORTS [REPORT] AND CERTIFICATES [CERTIFICATE] OF COMPLIANCE. (a) Inspection reports [An inspection report] and certificates [a certificate] of compliance required under this subchapter must cover all [elevators, escalators, and related] equipment in a building or structure appurtenant to the building, including a parking facility, that is [are] owned by the same person or persons. [There shall be only one inspection report and one certificate of compliance for each building.]

(b) An inspector shall date and sign an inspection report and shall issue the report to the building owner not later than the 10th calendar day after the date of inspection. [The inspection report shall be on forms designated by the commissioner.]

(c) The executive director [commissioner] shall date and sign a certificate of compliance and shall issue the certificate to the building owner. The certificate of compliance shall state:

(1) that the [elevators, escalators, and related] equipment has [have] been inspected by a certified inspector and found by the inspector to be in compliance, except for any delays or waivers granted by the executive director [commissioner] and stated in the certificate;

(2) the date of the last inspection and the due date for the next inspection;  
and

(3) contact information at the department to report a violation of this subchapter.

(d) The commission by rule shall:

(1) specify what information must be contained in a certificate of compliance;

(2) describe the procedure by which a certificate of compliance is issued;

(3) require that a certificate of compliance related to an elevator be posted in a publicly visible area of the building; and

(4) determine what constitutes a "publicly visible area" under Subdivision (3).

Sec. 754.017. CERTIFIED INSPECTORS. (a) In order to inspect equipment, an individual must:

(1) be registered [An inspector must register] with the department;

(2) attend educational programs approved by the department;

(3) [and] be certified as a QEI-1 [an ASME QEI-1] inspector by an organization accredited by the American Society of Mechanical Engineers; and

(4) pay all applicable fees. [Any certification charges or fees shall be paid by the inspector.]

~~(b) [The commissioner may not by rule prohibit an ASME QEI-1 certified inspector who is registered with the department from inspecting under this subchapter an elevator, an escalator, or related equipment.]~~ A person assisting a certified inspector and working under the direct, on-site supervision of the inspector is not required to be ~~[ASME QEI-1]~~ certified.

(c) A registration expires on the first anniversary of the date of issuance.

(d) A certified inspector may not be required to attend more than seven hours of continuing education during each licensing period. [The commissioner may charge a \$15 fee to certified inspectors for registering with the department.]

Sec. 754.0171. CONTRACTOR REGISTRATION. (a) A person may not install, repair, or maintain equipment without registering as a contractor with the department as required by this subchapter.

(b) A contractor shall submit an application for registration and pay appropriate fees to the department. The registration application form may require information concerning the background, experience, or identity of the applicant.

(c) A registration expires on the first anniversary of the date of issuance.

(d) A person registering as a contractor under this subchapter shall submit to the department an initial report, not later than the 60th day following the application date, containing:

(1) the street address of each building or location at which the person performed installation, repair, alteration, or maintenance of equipment for the previous two years; and

(2) the name and mailing address of the building owner.

(e) After the initial report required by Subsection (d), a contractor registered as required by this subchapter shall submit to the department a quarterly report containing:

(1) the street address of each building or location at which the contractor performed installation, repair, alteration, or maintenance of equipment not reported in the contractor's initial report to the department under Subsection (d); and

(2) the name and mailing address of the building owner.

(f) Installation, repair, alteration, and maintenance standards for contractors must be consistent with ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, and ASCE Code 21.

Sec. 754.0172. INSPECTION FEE. [~~(a) A person inspecting an elevator, an escalator, or related equipment under this subchapter may not charge more than \$65 per elevator cab or per escalator for each inspection.~~

[(~~b~~) The amount charged for an inspection or the performance of an inspection of equipment under this subchapter may not be contingent on the existence of a maintenance contract between the person performing the inspection and any other person.

Sec. 754.018. POWERS OF MUNICIPALITIES. Subject to Section 754.014(h), if [H] a municipality operates a program for the installation, maintenance, alteration, inspection, or [and] certification of [elevators, escalators, and related] equipment, this subchapter shall not apply to the [elevators, escalators, and related]

equipment in that municipality, provided that the standards of installation, maintenance, alteration, inspection, and certification are at least equivalent to ~~[no less stringent than]~~ those contained in this subchapter.

Sec. 754.019. DUTIES OF REAL PROPERTY OWNERS. (a) The owner of real property on which ~~[an elevator, an escalator, or related]~~ equipment covered by this subchapter is located shall:

(1) have the ~~[elevator, escalator, or related]~~ equipment inspected annually by a ~~[an ASME QEI]~~ certified inspector ~~[in accordance with the commissioner's rules];~~

(2) obtain an inspection report from the inspector evidencing that all ~~[elevators, escalators, and related]~~ equipment in a building on the real property was inspected ~~[were]~~ in accordance with this subchapter and rules adopted under this subchapter;

(3) file with the executive director ~~[commissioner a copy of]~~ each inspection report, and all applicable fees, ~~[and a \$20 filing fee for each report, plus \$5 for each elevator, escalator, or related equipment]~~ not later than the 60th day after the date on which an inspection is made under this subchapter;

(4) display the certificate of compliance:

(A) in a publicly visible area of the building, as determined by commission rule under Section 754.016, ~~[the elevator mechanical room]~~ if the certificate relates to an elevator;

(B) in the escalator box if the certificate relates to an escalator; or

(C) in a place designated by the executive director ~~[commissioner]~~ if the certificate relates to ~~[related]~~ equipment other than an elevator or escalator; and

(5) display the inspection report at the locations designated in Subdivision (4) until a certificate of compliance is issued ~~[by the commissioner].~~

(b) When an inspection report is filed ~~[with the commissioner],~~ the owner shall submit to the executive director, as applicable ~~[commissioner]:~~

(1) verification that any deficiencies in the inspector's report have been remedied or that a bona fide contract to remedy the deficiencies has been entered into; or

(2) any application for delay or waiver of an applicable standard.

(c) ~~[An inspection must be made not later than 18 months after the previous calendar year's inspection. This subsection does not affect the requirement that elevators, escalators, or related equipment be inspected at least once each calendar year.]~~

~~[(d)]~~ For the purpose of determining timely filing under Subsection (a)(3) and Section 754.016(b), an inspection report and filing fees ~~[fee]~~ are considered filed on the earlier of:

(1) the date of personal delivery;

(2) the date of postmark ~~[mailing]~~ by United States mail if properly addressed to the executive director; or

(3) the date of deposit with a commercial courier service, if properly addressed to the executive director ~~[commissioner].~~

~~(d) [(e) If the inspection report and fee required by Subsection (a)(3) are not timely filed, the commissioner may charge the owner of the real property on which the elevator, escalator, or related equipment is located an additional \$100 fee for late filing.~~

~~[(f) The commissioner may not require that an inspection report or certificate of compliance be placed inside or immediately outside an elevator cab or escalator or in the lobby or hallways of a building.~~

~~[(g) A fee may not be charged or collected for a certificate of compliance for an institution of higher education as defined in Section 61.003, Education Code.~~

(e) An owner shall report to the department each accident involving equipment not later than 72 hours following the accident.

Sec. 754.020. CHIEF ELEVATOR INSPECTOR [DEPOSIT OF FEES]. The executive director may appoint a chief elevator inspector to administer the equipment inspection and registration program. The chief elevator inspector:

(1) may not have a financial or commercial interest in the manufacture, maintenance, repair, inspection, installation, or sale of equipment; and

(2) must possess a QEI-1 certification or obtain the certification within six months after becoming chief inspector [Fees collected under this subchapter shall be deposited to the credit of an account in the general revenue fund that may be used by the commissioner only to administer and enforce this subchapter and to reimburse expenses of board members provided by this subchapter].

Sec. 754.021. LIST OF REGISTERED INSPECTORS AND CONTRACTORS [PERSONNEL]. The executive director shall [commissioner may]:

(1) compile a list of [ASME QEI-1] certified inspectors and contractors who are registered with the department [to perform an inspection under this subchapter]; and

(2) employ personnel who are [as] necessary to enforce this subchapter.

Sec. 754.022. NOTICE OF NONCOMPLIANCE. If the department [commissioner] learns of a situation of noncompliance under Section 754.019, the department [commissioner] shall send notice by certified mail of the noncompliance and the actions required to remedy the noncompliance to the record owner of the real property on which the equipment that is the subject of the noncompliance is located.

Sec. 754.023. INVESTIGATION; REGISTRATION [LICENSE] PROCEEDINGS; INJUNCTION; EMERGENCY ORDERS. (a) If there is good cause for the executive director [commissioner] to believe that [an elevator, an escalator, or related] equipment on real property poses an imminent and significant danger [is dangerous] or that an accident involving [an elevator, an escalator, or related] equipment occurred on the property and serious bodily injury or property damage resulted, the executive director [the commissioner] may enter the property during regular business hours after notice to the owner, operator, or person in charge of the property to inspect the [elevator, escalator, or related] equipment or investigate the danger or accident at no cost to the owner.

(b) The executive director [commissioner] may enter real property during regular business hours after notice to the owner, operator, or person in charge of the property to verify, at no cost to the owner, whether an inspection report or certificate of compliance has been displayed as required under Section 754.019(a).

(c) The commission [commissioner] may deny, suspend, or revoke a [the] registration under this subchapter and may assess an administrative penalty [of any ASME QEI 1 certified inspector] for:

(1) obtaining registration with the executive director [commissioner] by fraud or false representation;

(2) falsifying a [any inspection] report submitted to the executive director [commissioner]; or

(3) violating this subchapter or a rule adopted under this subchapter.

(d) Proceedings for the denial, suspension, or revocation of a registration and appeals from those proceedings are governed by Chapter 2001, Government Code.

(e) The executive director [commissioner] is entitled to appropriate injunctive relief to prevent a violation or threatened violation of this subchapter or a rule adopted under this subchapter.

(f) [e] The executive director [commissioner] may bring suit in a district court in Travis County or in the county in which the violation or threatened violation occurs. If requested, the attorney general shall represent the executive director [commissioner] in the suit.

(g) The executive director may issue an emergency order as necessary to enforce this subchapter if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety.

(h) The executive director may issue an emergency order with simultaneous notice and without hearing or with the notice and opportunity for hearing practicable under the circumstances.

(i) If an emergency order is issued under this section without a hearing, the executive director shall set the time and place for a hearing to affirm, modify, or set aside the emergency order not later than the 10th day after the date the order was issued.

(j) An emergency order may direct a building owner or manager to disconnect power to or lock out equipment if:

(1) the department determines imminent and significant danger to passenger safety exists if action is not taken immediately and reasonable effort has been made for voluntary compliance by notification to the building owner or manager of the danger before the issuance of an emergency order; or

(2) an annual inspection has not been performed in more than two years and:

(A) the department gives the building owner or manager, or the agent of the building owner or manager, 60 days' written notice by certified mail directing the equipment to be inspected according to this subchapter; and

(B) after the expiration of the notice period under Paragraph (A), the department gives the building owner or manager, or the agent of the building owner or manager, written notice by certified mail stating that an order to disconnect power or lock out equipment will be made after the seventh day after the date notice is delivered.

(k) If an emergency order to disconnect power or lock out equipment is issued, the building owner or manager may have the power reconnected or the equipment unlocked only if:

(1) a registered inspector or contractor or a department representative has filed a written form with the department verifying the imminent and significant danger has been removed by repair, replacement, or other means; and

(2) the building owner, before the reconnection of power or unlocking of equipment, reimburses the department for all expenses incurred relating to the disconnection of power or lockout.

(l) The executive director or the executive director's designee may allow delayed payment if the building owner or manager commits in writing to pay the department for the expenses required by Subsection (k) not later than the 10th day after the date power is reconnected or equipment is unlocked.

(m) If an emergency order to disconnect power or lock out equipment is issued and the building owner later notifies the department that the imminent and significant danger no longer exists, the executive director or the executive director's designee shall, after the requirements of Subsection (k) are satisfied, promptly issue written permission to reconnect power or unlock the equipment and notify the owner.

Sec. 754.024. CRIMINAL PENALTY. (a) A person commits an offense if the person receives notice of noncompliance under Section 754.022 and the person has not remedied the noncompliance or entered into a bona fide contract to remedy the noncompliance before the 61st day after the date on which the notice is received.

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

(c) Each day of an offense under Subsection (a) constitutes a separate offense.

Sec. 754.025. APPLICATION OF CERTAIN LAW. (a) Chapter 53, Occupations Code, applies to a registration under this subchapter.

(b) Sections 51.401 and 51.404, Occupations Code, do not apply to this subchapter.

SECTION 11.02. Not later than December 1, 2003, the Texas Commission of Licensing and Regulation shall adopt the rules required by Section 754.016 and Subsection (a), Section 754.019, Health and Safety Code, as amended by this article.

SECTION 11.03. The changes in law made by this article apply only to an inspection report or certificate of compliance issued on or after the effective date of this article. An inspection report or certificate issued before the effective date of this article is covered by the law in effect when the report or certificate was issued and is valid until the renewal date of that report or certificate under the terms of the former law, and the former law is continued in effect for that purpose. On renewal, an inspection report or certificate is subject to Chapter 754, Health and Safety Code, as amended by this article.

SECTION 11.04. (a) This article takes effect September 1, 2003, except that:

(1) a contractor is not required to be registered under Section 754.0171, Health and Safety Code, as amended by this article, before January 1, 2004; and

(2) an escalator constructed before September 1, 2003, is not required to comply with step/skirt index requirements imposed under the 2002 American Society of Mechanical Engineers Safety Code for Elevators and Escalators A17.3 before September 1, 2009.

(b) A member of the elevator advisory board serving on the effective date of this article continues to serve until removed by the governor or until the member's successor is appointed by the governor.

**Floor Amendment No. 11**

Amend **CSSB 279** by striking Article 13 of the bill and renumbering the subsequent articles of the bill appropriately.

**Floor Amendment No. 13**

Amend Floor Amendment No. 10 by Geren to **CSSB 279** as follows:

(1) In SECTION 11.01, in amended Section 754.012(a), Health and Safety Code (page 3, line 28), between "commission" and "~~[commissioner]~~", insert ", with the commission's approval,".

(2) In SECTION 11.01, in amended Section 754.012(c), Health and Safety Code (page 4, line 18), between "commission" and "~~[commissioner]~~", insert ", with the commission's approval,".

(3) In SECTION 11.01, in amended Section 754.019(a)(1), Health and Safety Code (page 14, line 23), strike "~~[in accordance with the commissioner's rules]~~" and substitute "in accordance with the commission's ~~[commissioner's]~~ rules".

(4) In SECTION 11.02 (page 20, line 29), strike "December 1, 2003" and substitute "March 1, 2004".

**Floor Amendment No. 16**

Amend **CSSB 279** by adding appropriately numbered sections in Article 12 of the bill to read as follows:

SECTION \_\_\_\_\_. Section 1202.251(b), Occupations Code, is amended to read as follows:

(b) Except as provided by Section 1202.253, requirements ~~[Requirements]~~ and regulations not in conflict with this chapter or with other state law relating to transportation, erection, installation, or use of industrialized housing or buildings must be reasonably and uniformly applied and enforced without distinctions as to whether the housing or buildings are manufactured or are constructed on-site.

SECTION \_\_\_\_\_. Subchapter F, Chapter 1202, Occupations Code, is amended by adding Section 1202.253 to read as follows:

Sec. 1202.253. MUNICIPAL REGULATION OF SINGLE-FAMILY AND DUPLEX INDUSTRIALIZED HOUSING. (a) Single-family or duplex industrialized housing must have all local permits and licenses that are applicable to other single-family or duplex dwellings.

(b) For purposes of this section, single-family or duplex industrialized housing is real property.

(c) A municipality may adopt regulations that require single-family or duplex industrialized housing to:

(1) have a value equal to or greater than the median taxable value for each single-family dwelling located within 500 feet of the lot on which the industrialized housing is proposed to be located, as determined by the most recent certified tax appraisal roll for each county in which the properties are located;

(2) have exterior siding, roofing, foundation fascia, and fenestration compatible with the single-family dwellings located within 500 feet of the lot on which the industrialized housing is proposed to be located;



(3) comply with municipal aesthetic standards, building setbacks, side and rear yard offsets, subdivision control, architectural landscaping, square footage, and other site requirements applicable to single-family dwellings; or

(4) be securely fixed to a permanent foundation.

(d) For purposes of Subsection (c), "value" means the taxable value of the industrialized housing and the lot after installation of the housing.

(e) Except as provided by Subsection (c), a municipality may not adopt a regulation under this section that is more restrictive for industrialized housing than that required for a new single-family or duplex dwelling constructed on-site.

(f) This section does not:

(1) limit the authority of a municipality to adopt regulations to protect historic properties or historic districts; or

(2) affect deed restrictions.

### **Amendment No. 17**

Amend Floor Amendment No. 16 to **CSSB 279** on page 1, line 27 by inserting the words "roof pitch" between the words "roofing," and "foundation fascia".

### **Floor Amendment No. 20**

Amend **CSSB 279** by adding the following ARTICLE and SECTIONS, appropriately numbered, and renumbering the ARTICLES and SECTIONS of the bill as appropriate:

ARTICLE \_\_\_\_\_. REGULATION OF PRIVATE PROCESS SERVERS

Section \_\_\_\_\_.01. The Civil Practice and Remedies Code is amended by adding Title 8 to read as follows:

#### TITLE 8. CIVIL PROCESS

#### CHAPTER 191. PRIVATE PROCESS SERVERS

Sec. 191.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "Executive director" means the executive director of the department.

Sec. 191.002. APPLICABILITY OF CHAPTER. (a) This chapter does not apply to a sheriff, constable, or clerk of a court engaged in the discharge of that person's official duties.

(b) This chapter does not limit or restrict the service of process in this state as provided by a court order.

(c) Chapter 51, Occupations Code, applies to this chapter.

Sec. 191.003. RULES. The commission shall adopt rules for the implementation of this chapter.

Sec. 191.004. FEES. The commission by rule shall set fees in amounts reasonable and necessary to cover the costs of administering this chapter.

Sec. 191.005. LICENSE OR REGISTRATION REQUIRED. A person may not serve civil process in this state unless the person is licensed or registered under this chapter.

Sec. 191.006. LICENSE APPLICATION; TEMPORARY LICENSE. (a) An applicant for an initial process server license under this chapter must submit an application on a form prescribed by the executive director. To be eligible for a license under this section, an applicant must:

(1) be at least 18 years of age;

(2) not have been convicted of a misdemeanor involving moral turpitude or a felony;

(3) submit the nonrefundable application fee; and

(4) comply with the requirements adopted under Subsection (b).

(b) Each license applicant must provide proof to the department, in a manner acceptable to the department, of:

(1) completion of a department-approved seminar consisting of at least eight hours of instruction in civil process; and

(2) maintenance of insurance coverage as required by rules adopted by the commission.

(c) An applicant who is employed in this state as a sheriff, constable, or clerk of a court is exempt from any requirement for a criminal background check and any civil process instruction requirements for a license under this chapter.

(d) The executive director shall issue a temporary license not later than the 30th day after the date an applicant submits evidence satisfactory to the department that the applicant has properly completed the application, has paid all required fees, and meets all of the qualifications established by this chapter and by rule of the commission. A temporary license is valid for not more than 90 days after the date of issuance. If, on completion of the license application process, the executive director denies an application for a license, the applicant shall return the applicant's temporary license and immediately stop serving process under this chapter.

Sec. 191.007. AGENT REGISTRATION. (a) A person registered under this chapter as the agent of a license holder may execute civil process under this chapter on behalf of the license holder.

(b) An applicant for an agent registration shall submit an application to the department on a form prescribed by the executive director. To be eligible for registration under this section, an applicant must:

(1) be at least 18 years of age;

(2) not have been convicted of a misdemeanor involving moral turpitude or a felony;

(3) provide proof to the department, in a manner acceptable to the department, that the applicant:

(A) has completed a department-approved seminar consisting of at least eight hours of instruction in civil process; and

(B) maintains insurance coverage as required by rules adopted by the commission; and

(4) submit the nonrefundable application fee and the registration fee.

(c) An applicant who is employed in this state as a sheriff, constable, or clerk of a court is exempt from any requirement for a criminal background check and any civil process instruction requirements for an agent registration under this chapter.

Sec. 191.008. POWERS AND DUTIES OF LICENSE HOLDERS AND REGISTERED AGENTS. A license holder or registered agent may serve civil process issued by the courts of this state in the manner provided by law for service by sheriffs and constables. The person may serve the process on any day of the week anywhere in this state.

Sec. 191.009. PUBLIC SERVANT; OFFICER OF COURT. Each license holder and registered agent shall be considered to be a public servant when performing duties related to serving process and considered to be an officer of the civil courts of this state, but may not be considered to be a peace officer based on that license or registration. An assault on a license holder or registered agent shall be treated as an assault on a public servant.

Sec. 191.010. ENFORCEMENT. (a) The commission may assess and collect administrative penalties for a violation of this chapter or a commission rule or order under Chapter 51, Occupations Code.

(b) The commission may issue administrative sanctions for a violation of this chapter or a commission rule or order under Chapter 51, Occupations Code.

(c) The department may issue cease and desist orders.

SECTION \_\_\_\_ .02. (a) Except as provided by Subsection (b) of this section, this article takes effect September 1, 2003.

(b) Section 191.005, Civil Practice and Remedies Code, as added by this Act, takes effect March 31, 2004.

### **Floor Amendment No. 21**

Amend **CSSB 279** by inserting the following appropriately numbered article in the bill and renumbering the subsequent articles of the bill accordingly:

#### ARTICLE \_\_\_\_ . WEATHER MODIFICATION

SECTION \_\_\_\_ .001. Section 20.001, Agriculture Code, as added by Chapter 376, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 20.001. FINDINGS. The legislature finds that weather modification and control activities may have a significant impact on Texas agriculture. The legislature further finds that the Texas Department of Licensing and Regulation [~~Agriculture~~] is the proper state agency to administer grants to political subdivisions for weather modification and control activities.

SECTION \_\_\_\_ .002. Section 20.002, Agriculture Code, as added by Chapter 376, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 20.002. DEFINITIONS [~~DEFINITION~~]. In this chapter:

(1) "Department" means the Texas Department of Licensing and Regulation.

(2) "Weather [~~weather~~] modification and control" means changing or controlling, or attempting to change or control, by artificial methods the natural development of atmospheric cloud forms or precipitation forms that occur in the troposphere.

SECTION \_\_\_\_ .003. (a) On the effective date of this article, in accordance with the General Appropriations Act enacted by the 78th Legislature:

(1) all powers, duties, obligations, rights, and contracts of the Department of Agriculture associated with the weather modification and control grant program are transferred to the Texas Department of Licensing and Regulation;

(2) all authority to fill full-time equivalent positions to administer the weather modification and control grant program and all unspent and unobligated appropriations to and other money held by the Department of Agriculture in connection with the program are transferred to the Texas Department of Licensing and Regulation; and

(3) all files, records, equipment, and other property of the Department of Agriculture that are used by that agency in connection with the administration of the weather modification and control grant program become the property of the Texas Department of Licensing and Regulation, but remain in the same location unless moved in accordance with the memorandum of understanding adopted under Subsection (b) of this section.

(b) The Department of Agriculture and the Texas Department of Licensing and Regulation shall adopt a memorandum of understanding not later than the 30th day after the effective date of this article that provides for the transfer, by that date, of any files, records, equipment, property, and personnel necessary to accomplish the transfer of the weather modification and control grant program from the Department of Agriculture to the Texas Department of Licensing and Regulation.

### **Floor Amendment No. 22**

Amend **CSSB 279** by adding the following appropriately numbered ARTICLE and SECTIONS and renumbering the ARTICLES and SECTIONS of the bill accordingly:

#### ARTICLE \_\_\_\_ . COMBATIVE SPORTS

SECTION \_\_\_\_ .001. Chapter 2052, Occupations Code, is amended to read as follows:

#### CHAPTER 2052. COMBATIVE SPORTS

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2052.001. LEGISLATIVE DECLARATION. This chapter shall be liberally construed and applied to promote its underlying purposes.

Sec. 2052.002. DEFINITIONS. In this chapter:

(1) "Boxing" includes kickboxing, in which a person delivers blows with any part of the arm below the shoulder, including the hand, and any part of the leg below the hip, including the foot.

(2) "Boxing promoter" means a person who arranges, advertises, or conducts a boxing event.

(3) "Commission" means the Texas Commission of Licensing and Regulation [~~"Championship tournament" means a state, regional, national, or international elimination tournament in which the winners of elimination tournaments compete for a championship in each weight category.~~].

(4) [~~"Commissioner" means the commissioner of licensing and regulation or the commissioner's designated representative.~~]

[(5)] "Department" means the Texas Department of Licensing and Regulation.

(5) [(6)] "Elimination tournament" means a boxing contest in which elimination tournament contestants compete in a series of matches until not more than one contestant remains in any weight category. The term does not include a boxing event described by Section 2052.108.

(6) "Executive director" means the executive director of the department or the executive director's designated representative.

~~(7) ["Elimination tournament boxing promoter" means a person who arranges, advertises, or conducts an elimination tournament.~~

~~[(8) "Elimination tournament contestant" means a person who competes in an elimination tournament.~~

~~[(9)] "Exhibition" means a boxing or wrestling skills demonstration.~~

~~(8) [(40)] "Event" means a contest, match, or exhibition.~~

~~(9) [(41)] "Judge" means a person who is:~~

(A) located at ringside during a boxing match; and

(B) responsible for scoring the performances of the participants in the match.

~~(10) [(12) "Local tournament" means an elimination tournament in which only a resident of this state may compete.~~

~~[(13)] "Professional boxer" means a person who competes in a boxing event in this state conducted for a purse or compensation.~~

(11) "Promoter" means a boxing promoter or wrestling promoter.

~~(12) [(44)] "Referee" means a person who:~~

(A) is present in the ring during a boxing event; and

(B) exercises general supervision of the event.

(13) "Ringside physician" means an individual licensed to practice medicine in this state who is registered with the department.

~~(14) [(15) "Regional tournament" means an elimination tournament in which a contestant from outside of the immediate area in which the tournament is conducted may compete against local contestants.~~

~~[(16)] "Wrestling promoter" means a person who arranges, advertises, or conducts a wrestling event.~~

#### SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT AND COMMISSIONER

Sec. 2052.051. ADMINISTRATION OF CHAPTER. The department shall administer this chapter.

Sec. 2052.052. RULES. (a) The executive director ~~[commissioner]~~ shall adopt reasonable and necessary rules to administer this chapter.

(b) The executive director ~~[commissioner]~~ may adopt rules:

(1) governing professional kickboxing contests and exhibitions; ~~[and]~~

(2) establishing reasonable qualifications for an applicant seeking a license from the department under this chapter;

(3) recognizing a sanction, medical suspension, or disqualification of a license holder by a combative sports authority in any state, provided that if licensure is denied based on those actions, an applicant has a right to a hearing as prescribed by rule;

(4) establishing practice requirements or specialty certifications that a person licensed to practice medicine in this state must meet to register as a ringside physician;

(5) requiring a contestant to present to the executive director at the time of weigh-in an original copy of recent blood test results that demonstrate whether the contestant is free from hepatitis B virus, hepatitis C virus, human immunodeficiency virus, and any other communicable disease designated by rule of the executive director and providing that a contestant's failure to provide the required blood test results will disqualify the contestant;

(6) providing that to participate in any event a contestant must be free of hepatitis B virus, hepatitis C virus, human immunodeficiency virus, and any other communicable disease designated by rule;

(7) requiring that a contestant undergo a physical examination, including an ophthalmological examination, at or near the time of weigh-in and providing for disqualification of a contestant who is determined by an examining physician to be unfit; and

(8) establishing additional responsibilities for promoters.

Sec. 2052.053. INVESTIGATIVE AUTHORITY. (a) The executive director [~~commissioner~~] shall investigate allegations of activity that may violate this chapter.

(b) The executive director [~~commissioner~~] may enter, at a reasonable time, a place of business or an establishment in which activity alleged to violate this chapter may occur. The executive director [~~commissioner~~] is not required to give advance notice before entering.

Sec. 2052.054. CONTINUING EDUCATION. (a) The executive director [~~commissioner~~] may recognize, prepare, or administer continuing education programs for persons licensed under this chapter.

(b) Participation in a continuing education program under Subsection (a) is voluntary.

Sec. 2052.055. MEDICAL ADVISORY COMMITTEE. (a) The executive director may appoint a medical advisory committee to advise the department concerning health issues for boxing event contestants.

(b) If the executive director elects to appoint an advisory committee, the executive director by rule shall establish:

(1) the number of committee members;

(2) qualifications for appointment to the committee; and

(3) the purpose and duties of the committee.

#### SUBCHAPTER C. LICENSING, REGISTRATION, AND PERMITS

Sec. 2052.101. BOXING PROMOTER LICENSE. A person may not act as a boxing promoter [~~or an elimination tournament boxing promoter~~] unless the person holds a license issued under this chapter.

Sec. 2052.102. BOXING PROMOTER LICENSE APPLICATION REQUIREMENTS. (a) An applicant for a boxing promoter's license under this chapter must apply on a form furnished by the executive director [~~commissioner~~].

(b) An application must be accompanied by:

(1) a license fee in an amount set by the department [~~commission~~]; and

(2) a surety bond:

(A) subject to approval by the executive director [~~commissioner~~]; and

(B) conditioned on the applicant's payment of the tax imposed under

Section 2052.151.

(c) The executive director ~~[commissioner]~~ shall establish the amount of the surety bond required under Subsection (b). The bond amount may not be less than \$300.

Sec. 2052.103. ~~[ELIMINATION TOURNAMENT BOXING PROMOTER LICENSE APPLICATION REQUIREMENTS. (a) An applicant for an elimination tournament boxing promoter's license under this chapter must apply on a form furnished by the commissioner.~~

~~[(b) An application must be accompanied by an application fee of not more than \$1,000 and, if the applicant charges a fee for admission to the elimination tournament or awards a trophy, prize, including a prize of money, or other item of value of more than \$50 to a contestant winning the elimination tournament:~~

~~[(1) a \$50,000 surety bond subject to approval by the commissioner and conditioned on the applicant's payment of:~~

~~[(A) the tax imposed under Section 2052.151; and~~

~~[(B) a claim against the applicant as described by Section 2052.109(a)(3); and~~

~~[(2) proof of not less than \$10,000 accidental death or injury insurance coverage for each contestant participating in the elimination tournament.~~

~~[Sec. 2052.104. ELIMINATION TOURNAMENT BOXING PROMOTER ANNUAL LICENSE FEE. The annual fee for an elimination tournament boxing promoter's license may not exceed \$1,000.~~

~~[Sec. 2052.105.] WRESTLING PROMOTER REGISTRATION. A person may not act as a wrestling promoter unless the person is registered with the secretary of state under this chapter.~~

Sec. 2052.104 ~~[2052.106]~~. WRESTLING PROMOTER APPLICATION REQUIREMENTS. (a) Registration as a wrestling promoter must be made on a form furnished by the secretary of state.

(b) A registration must be accompanied by:

(1) a registration fee prescribed by the secretary of state in an amount reasonably necessary to cover the costs of administering the wrestling promoters registration program; and

(2) a \$5,000 surety bond to be filed with the secretary of state.

Sec. 2052.105 ~~[2052.107]~~. OTHER BOXING LICENSES. Unless a person holds a license or registration issued under this chapter, the person may not act as a:

- (1) professional boxer;
- (2) manager of a professional boxer;
- (3) referee;
- (4) judge;
- (5) second;
- (6) timekeeper; ~~[or]~~
- (7) matchmaker; or
- (8) ringside physician.

Sec. 2052.106 ~~[2052.108]~~. APPLICATION REQUIREMENTS FOR OTHER LICENSES. (a) An application for a license under Section 2052.105 ~~[2052.107]~~ must be made on a form furnished by the executive director ~~[commissioner]~~.

(b) An application must be accompanied by the required license fee.

Sec. 2052.107 [~~2052.109~~]. SURETY BOND. (a) A surety bond required under this subchapter must:

- (1) be issued by a company authorized to conduct business in this state;
- (2) comply with the applicable requirements of the Insurance Code;
- (3) be payable to the state for use by the state or a political subdivision that establishes that the boxing or wrestling promoter is liable to it for damages, penalties, taxes, or other expenses resulting from promotional activities conducted in this state; and
- (4) be open to more than one claim, except that the claims may not exceed the face value of the bond.

(b) A person required to file a surety bond under this subchapter shall file a new bond annually.

(c) A company that issues a bond shall notify the department in writing of the cancellation of the bond not later than the 30th day before the date on which the bond is canceled.

Sec. 2052.108 [~~2052.110~~]. LICENSE AND BONDING EXCEPTIONS. The licensing and bonding requirements of this subchapter do not apply to:

(1) a boxing event in which the participants do not receive a money remuneration, purse, or prize for their performances or services if the event is promoted, conducted, or maintained by:

- (A) an educational institution;
- (B) a law enforcement organization;
- (C) a Texas National Guard Unit; or
- (D) an amateur athletic organization recognized by the executive

director [~~commissioner~~];

(2) an event conducted by a nonprofit amateur athletic association chartered under the law of this state, including a membership club affiliated with the association located within this state and recognized by the executive director [~~commissioner~~];

(3) an event conducted by a college, school, or university that is part of the institution's athletic program in which only students of different educational institutions participate; [~~or~~]

(4) an event in which only members of a troop, battery, company, or unit of the Texas National Guard or a law enforcement agency participate; or

(5) an event conducted by an organization of the Olympic Games, the Paralympic Games, or the Pan-American Games.

Sec. 2052.109 [~~2052.111~~]. DENIAL OF APPLICATION. The executive director [~~commissioner~~] may deny an application for a license if:

- (1) the applicant does not meet the qualifications for the license; or
- (2) after conducting an investigation and a hearing, the executive director [~~commissioner~~] determines that the applicant has violated this chapter or a rule adopted under this chapter.

Sec. 2052.110 [~~2052.112~~]. RECIPROCITY AGREEMENT. The executive director [~~commissioner~~] may waive a license requirement under this subchapter if the applicant holds a license issued by another state that has a reciprocity agreement with this state.



Sec. 2052.111 [~~2052.113~~]. LICENSE AND PERMIT REQUIRED FOR CLOSED CIRCUIT BOXING TELECAST. A person who exhibits in this state a simultaneous telecast of a live, spontaneous, or current boxing event on a closed circuit telecast in which a fee is charged for admission to the telecast must:

- (1) hold a boxing promoter's license under this chapter; and
- (2) obtain a permit for the closed circuit telecast.

Sec. 2052.112. LICENSE, REGISTRATION, AND PERMIT TERM AND RENEWAL. (a) A license, registration, or permit issued under this chapter is valid for one year after the date of issuance.

(b) The holder of a license, registration, or permit may renew the license, registration, or permit by paying a renewal fee and complying with other renewal requirements prescribed by department rule before the expiration date. The department shall issue a renewal certificate to the holder at the time of renewal.

Sec. 2052.113. PROMOTER RESPONSIBILITIES. For each promoted event, a promoter shall:

- (1) assure that all contestants scheduled to participate are licensed before the event;
- (2) provide that an ambulance, serviced by at least two emergency medical technicians, is present on the premises where the event is held;
- (3) provide for a physical examination of each contestant that complies with rules adopted under this chapter; and
- (4) comply with all applicable rules adopted by the executive director or the commission.

#### SUBCHAPTER D. GROSS RECEIPTS TAX

Sec. 2052.151. IMPOSITION AND RATE OF TAX. (a) A tax is imposed on a person who:

- (1) conducts a boxing event[~~, including an elimination tournament,~~] in which a fee is charged for admission to the event;
- (2) exhibits in this state a simultaneous telecast of a live, spontaneous, or current boxing event on a closed circuit telecast, in which a fee is charged for admission to the telecast; or
- (3) conducts or sponsors an amateur boxing event, other than an event exempt from licensing under Section 2052.108(2) [~~2052.110(2)~~], (3), [~~or~~] (4), or (5), in which a fee is charged for admission to the event.

(b) The rate of the tax is three percent of the gross receipts obtained from the event.

Sec. 2052.152. TAX REPORT AND PAYMENT. (a) A person on whom a tax is imposed under Section 2052.151, not later than 72 hours after the end of the event or telecast for which the tax is due, shall submit to the department a verified report on a form furnished by the department stating:

- (1) the number of tickets sold to the event;
- (2) the ticket prices charged; [~~and~~]
- (3) the gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising, or other expenses or charges; and
- (4) the amount of gross receipts obtained from the event.

(b) The person shall attach to the report a cashier's check or money order payable to this state in the amount of the tax imposed on the event covered by the report.

(c) The department may audit a report filed under Subsection (b).

Sec. 2052.153. ~~CLOSED CIRCUIT TELECAST.~~ A person exhibiting a simultaneous telecast of a live, spontaneous, or current boxing event on a closed circuit telecast in which a fee is charged for admission to the exhibition:

(1) must:

(A) be a boxing promoter; and

(B) obtain a permit for each telecast exhibited; and

(2) shall comply with the tax provisions of Section 2052.151.

~~[Sec. 2052.154. CERTAIN AMATEUR EVENTS. A person shall comply with the tax requirements imposed under Section 2052.151 if the person:~~

~~[(1) conducts or sponsors an amateur boxing event, except an event conducted under Section 2052.110(2), (3), or (4); and~~

~~[(2) charges an event admission fee.]~~

#### SUBCHAPTER E. ~~[REGULATION OF]~~ ELIMINATION TOURNAMENTS

Sec. 2052.201. ELIMINATION TOURNAMENTS PROHIBITED ~~[GENERAL RULES]~~. ~~[(a)]~~ An elimination tournament may not ~~[only]~~ be held in this state ~~[conducted as a one-night or two-night event]~~.

~~[(b) An elimination tournament match consists of three one minute rounds with an interval of at least one minute between rounds.~~

~~[(c) The standing-eight count and the three-knock-down rules apply to an elimination tournament.~~

~~[(d) An elimination tournament contestant must be randomly matched with an opponent in the same weight category as the contestant during the preliminary round of an elimination tournament.~~

~~[Sec. 2052.202. CONTESTANT PARTICIPATION. (a) An elimination tournament contestant may not participate in more than:~~

~~[(1) one match during the first night of a two-night elimination tournament other than a championship tournament; or~~

~~[(2) two matches during the first night of a two-night championship tournament.~~

~~[(b) An elimination tournament contestant may participate in any number of matches during the second night of a two-night elimination tournament.~~

~~[(c) Except as provided by Subsection (d), an elimination tournament boxing promoter may permit an elimination tournament contestant who does not win a match during the first night of a two-night elimination tournament to participate in the tournament during the second night of the tournament.~~

~~[(d) An elimination tournament contestant who is knocked out during the tournament may not continue to participate in the tournament.~~

~~[Sec. 2052.203. ELIMINATION TOURNAMENT BOXING PROMOTER RESPONSIBILITIES. (a) An elimination tournament boxing promoter shall require that each elimination tournament contestant:~~

~~[(1) be at least 18 years old and younger than 36 years old;~~

~~[(2) submit proof that the contestant has received proper training, including a written description of the contestant's training program during the 28 days before the elimination tournament;~~

~~[(3) have no professional boxing experience;~~

~~[(4) have fewer than six boxing match wins during the preceding five years that are recognized by an amateur boxing organization that is recognized under department rules for this purpose;~~

~~[(5) use 16-ounce gloves; and~~

~~[(6) wear the following protective gear provided by the promoter:~~

~~[(A) except as provided by Subsection (b), headgear approved by the department;~~

~~[(B) a mouthpiece; and~~

~~[(C) a groin guard or kidney groin guard approved by the department.~~

~~[(b) The elimination tournament boxing promoter of a local, regional, or championship elimination tournament is not required to require that each elimination tournament contestant wear headgear approved by the department if the promoter under department rules notifies the commissioner of the decision not to use the approved headgear.~~

~~[Sec. 2052.204. ELIMINATION TOURNAMENT RINGSIDE PHYSICIAN. (a) An elimination tournament boxing promoter shall provide a ringside physician for each elimination tournament.~~

~~[(b) An elimination tournament ringside physician shall:~~

~~[(1) perform a complete medical examination of each elimination tournament contestant at the tournament's location before the tournament begins;~~

~~[(2) remain at ringside at all times during a scheduled elimination tournament match;~~

~~[(3) offer solutions to boxing-related medical problems to the elimination tournament boxing promoter and contestants;~~

~~[(4) examine each elimination tournament contestant between matches;~~

~~[(5) immediately before the second night of a two-night elimination tournament, perform a complete physical examination of each elimination tournament contestant who is scheduled to participate during the second night; and~~

~~[(6) immediately notify the elimination tournament boxing promoter if the physician disqualifies an elimination tournament contestant.~~

~~[Sec. 2052.205. NEGATIVE PREGNANCY TEST RESULT. A female elimination tournament contestant may not participate in an elimination tournament unless the contestant provides the ringside physician with proof of a negative pregnancy test result.~~

~~[Sec. 2052.206. WEIGHT CATEGORIES. (a) The weight categories for an elimination tournament are:~~

~~[(1) less than 112 pounds;~~

~~[(2) 112 pounds or more and less than 119 pounds;~~

~~[(3) 119 pounds or more and less than 127 pounds;~~

~~[(4) 127 pounds or more and less than 136 pounds;~~

~~[(5) 136 pounds or more and less than 148 pounds;~~

~~[(6) 148 pounds or more and less than 161 pounds;~~

~~[(7) 161 pounds or more and less than 176 pounds;~~

~~[(8) 176 pounds or more and less than 190 pounds; and~~

~~[(9) 190 pounds or more.~~

~~[(b) An elimination tournament contestant may not compete in a weight category other than the contestant's weight category as listed under Subsection (a) unless the contestant:~~

~~[(1) competes in the next heavier weight category for the contestant; and~~

~~[(2) the contestant's weight is within three percent of the minimum weight for that next heavier weight category.~~

~~[Sec. 2052.207. RING REQUIREMENTS. (a) An elimination tournament match must be conducted in a square ring. Each side of the ring must be not less than 16 feet or more than 24 feet in length.~~

~~[(b) The floor of the ring must be:~~

~~[(1) three fourths inch thick; and~~

~~[(2) padded with one inch thick closed cell foam material.]~~

#### SUBCHAPTER F. OTHER COMBATIVE SPORT REGULATIONS

Sec. 2052.251. BOXING GLOVES. A boxing event contestant~~[, other than an elimination tournament contestant under Subchapter E,]~~ shall wear eight-ounce boxing gloves~~;~~ unless the executive director ~~[commissioner]~~ by rule requires or permits a contestant to wear heavier gloves.

Sec. 2052.252. CERTAIN AMATEUR EVENTS. (a) This section applies to an amateur boxing event, other than an event described by Section 2052.108(2), (3), (4), or (5) ~~[elimination tournament subject to Subchapter E]~~, in which a fee is charged for admission to the event.

(b) The event may take place only if the executive director ~~[commissioner]~~ approves the event not later than seven days before the date the event begins.

(c) Each entry in the event must be filed with the amateur organization not later than the third day before the date the event begins.

(d) The amateur organization shall determine the amateur standing of the event contestants.

(e) The event is subject to the supervision of the executive director ~~[commissioner]~~.

(f) All profits from the event must be used to develop amateur athletics.

(g) Only a referee or judge licensed under this chapter may participate in the event.

(h) Each contestant participating in the event must be examined by a licensed physician within a reasonable time before the event begins. A licensed physician must be present at ringside during the entire event.

(i) A professional boxer licensed under this chapter may not participate in any capacity in the event.

Sec. 2052.253. KICKBOXING. A professional kickboxing event must be fought on the basis of the contestants' best efforts.

SUBCHAPTER G. DISCIPLINARY PROCEDURES; PENALTIES;  
CRIMINAL OFFENSE

Sec. 2052.301. ADMINISTRATIVE PENALTIES AND SANCTIONS [REVOCAION AND SUSPENSION OF LICENSE OR PERMIT]. On a determination that a person has violated this chapter, a rule adopted under this chapter, or a rule adopted under Chapter 51, the executive director may impose administrative sanctions as provided by Subchapter G, Chapter 51, or the commission may impose administrative penalties as provided by Subchapter F, Chapter 51 ~~[The commissioner may revoke or suspend the license or permit of a license or permit holder under this chapter for violating this chapter or a rule adopted under this chapter].~~

Sec. 2052.3015. PROMOTER PENALTY FOR LATE LICENSE. A promoter who does not comply with Section 2052.113(1) in a timely manner is subject to a penalty under this chapter for each contestant who obtains a license less than 72 hours before an event in which the contestant is scheduled to participate.

Sec. 2052.302. WITHHOLDING OF PURSE AND FORFEITURE OF PURSE. (a) The executive director [commissioner] may order a promoter [boxer or manager] to withhold any [forfeit to this state a] purse or other funds payable to the holder of a license or registration under this chapter if it appears more likely than not that the holder has violated [in an amount of not more than \$1,000 for violating] this chapter or a rule adopted under this chapter.

(b) The promoter shall surrender any purse or funds withheld as provided by Subsection (a) to the executive director on demand. Not later than the fifth working day after the event, the department shall notify in writing the promoter and any person from whom a sum was withheld of the date of a hearing to determine whether all or part of the purse or funds withheld should be forfeited to the state. The hearing must be scheduled for a date not later than the 10th day after the date of the notice. Not later than the 10th day after the date of the hearing, the executive director shall enter an order with findings of fact and conclusions of law determining whether all or part of the purse or funds should be forfeited. Any funds not forfeited shall be distributed to the persons entitled to the funds.

(c) Except as otherwise provided by this subchapter, a proceeding under this section shall be conducted in the manner provided by Chapter 2001, Government Code.

(d) A person aggrieved by an order entered under this section may appeal the order by filing a petition in a district court in Travis County in the manner provided by Chapter 2001, Government Code.

Sec. 2052.303. CIVIL PENALTY; INJUNCTION. (a) A court may assess a civil penalty against a person who violates this chapter or a rule adopted under this chapter. The amount of the penalty may not exceed \$1,000 for each violation.

(b) The attorney general or the department may file a civil suit to:

- (1) assess and recover a civil penalty under Subsection (a); or
- (2) enjoin a person who violates or threatens to violate this chapter or a rule adopted under this chapter from continuing the violation or threat.

(c) Venue for a suit filed under Subsection (b) is in a district court in Travis County.

(d) A civil penalty assessed under this section shall be paid to this state.

Sec. 2052.304. PETITION FOR REVIEW. (a) A person may seek review of a decision or an order of the executive director or the commission [~~commissioner~~] under this chapter by filing a petition for review in a district court in Travis County [~~not later than the 30th day after the date on which the decision or order of the commissioner is final if the person is:~~

~~[(1) a party to an administrative hearing in which the decision or order is issued; and~~

~~[(2) aggrieved by the decision or order].~~

(b) Chapter 2001, Government Code, governs any proceeding under this section [~~The filing of a petition for review under Subsection (a) does not stay the effect of the decision or order of the commissioner that is the subject of the petition. The commissioner or the district court in which the petition for review is filed may order a stay on appropriate terms].~~

~~[(c) If a stay is ordered under Subsection (b), a supersedeas bond is not required.~~

~~[Sec. 2052.305. SERVICE OF PROCESS. A petition for review filed under Section 2052.304 must be served on:~~

~~[(1) the commissioner; and~~

~~[(2) all parties of record to a hearing before the commissioner that relates to the matter for which the petition for review is filed.~~

~~[Sec. 2052.306. CERTIFICATION OF RECORD. (a) On receipt of a petition for review served under Section 2052.305, the commissioner, not later than the date on which the answer to the petition must be filed or the date on which the record is made available to the commissioner, whichever date is later, shall certify to the district court in which the petition is filed the record of the proceedings to which the petition relates.~~

~~[(b) The petitioner shall pay the costs of preparing and certifying the record under this section.~~

~~[(c) On final determination of the review, the district court shall order payment of the costs described under Subsection (b) as part of the costs in the case.~~

~~[Sec. 2052.307. JUDICIAL REVIEW. (a) A district court reviewing a decision or an order of the commissioner under this subchapter shall try the action without a jury in the same manner as a civil action, except that evidence is not admissible unless the evidence was presented at the hearing or noticed in the record of the hearing before the commissioner. The petitioner has the burden of proof in the action.~~

~~[(b) The court may:~~

~~[(1) affirm the decision or order of the commissioner; or~~

~~[(2) remand the matter to the commissioner for further proceedings.]~~

Sec. 2052.305 [~~2052.308~~]. APPEAL. (a) The petitioner or executive director [~~commissioner~~] may appeal a final judgment of a court conducting a review under this subchapter in the same manner as a civil action.

(b) The executive director [~~commissioner~~] is not required to file an appeal bond.

Sec. 2052.306 [~~2052.309~~]. CRIMINAL OFFENSE. (a) A person commits an offense if the person violates this chapter or a rule adopted under this chapter.

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

SECTION \_\_\_\_.002. (a) Except as provided by Subsections (b) and (c) of this section, this article takes effect January 1, 2004.

(b) This section takes effect September 1, 2003.

(c) Section 2052.201, Occupations Code, as amended by this article, takes effect September 1, 2003, and applies to an elimination tournament scheduled to occur on or after that date. An elimination tournament scheduled to occur before that date is governed by the law in effect on the date that the tournament was scheduled, and the former law is continued in effect for that purpose.

SECTION \_\_\_\_\_.003. Section 2052.302, Occupations Code, as amended by this article, applies to a forfeiture imposed on or after the effective date of this article. A forfeiture imposed before that date is governed by the law in effect on the date that the forfeiture was ordered, and the former law is continued in effect for that purpose.

### **Floor Amendment No. 23**

Amend **CSSB 279** by adding the following ARTICLES, appropriately numbered, and renumbering ARTICLE 29 of the bill as appropriate:

ARTICLE 29. ABOLITION OF THE TEXAS FUNERAL  
SERVICES COMMISSION AND TRANSFER OF POWERS  
AND DUTIES TO TEXAS DEPARTMENT OF  
LICENSING AND REGULATION

SECTION 29.01. Section 651.001, Occupations Code, is amended by adding Subdivision (3-a) to read as follows:

(3-a) "Department" means the Texas Department of Licensing and Regulation.

SECTION 29.02. Subchapter A, Chapter 651, Occupations Code, is amended by adding Sections 651.004 and 651.005 to read as follows:

Sec. 651.004. TEXAS DEPARTMENT OF LICENSING AND REGULATION.

(a) The department shall administer this chapter. If in administering this chapter there is a conflict between a provision of this chapter and a provision of Chapter 51, the provision of Chapter 51 controls.

(b) A reference in this chapter or other law to the Texas Funeral Service Commission means the department.

Sec. 651.005. ADVISORY COMMITTEE. The governor shall appoint an advisory committee of seven persons to advise the department in administering this chapter.

SECTION 29.03. On September 1, 2003, the following laws are repealed:

- (1) Sections 651.001(2), 651.002, and 651.153, Occupations Code; and
- (2) Subchapters B, C, and E, Chapter 651, Occupations Code.

SECTION 29.04. On September 1, 2003:

(1) all functions and activities relating to Chapter 651, Occupations Code, performed by the Texas Funeral Service Commission immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the Texas Funeral Service Commission that relates to Chapter 651, Occupations Code, is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a reference in law or an administrative rule to the Texas Funeral Service Commission that relates to Chapter 651, Occupations Code, means the Texas Department of Licensing and Regulation;

(4) a complaint, investigation, or other proceeding before the Texas Funeral Service Commission that is related to Chapter 651, Occupations Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas Funeral Service Commission in an action or proceeding to which the Texas Funeral Service Commission is a party;

(5) all money, contracts, leases, property, and obligations of the Texas Funeral Service Commission related to Chapter 651, Occupations Code, are transferred to the Texas Department of Licensing and Regulation;

(6) all property in the custody of the Texas Funeral Service Commission related to Chapter 651, Occupations Code, is transferred to the Texas Department of Licensing and Regulation; and

(7) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Funeral Service Commission related to Chapter 651, Occupations Code, is transferred to the Texas Department of Licensing and Regulation.

SECTION 29.05. Not later than November 1, 2003, the governor shall appoint the advisory committee required by Section 651.005, Occupations Code, as added by this Act.

ARTICLE 30. ABOLITION OF THE TEXAS STRUCTURAL PEST  
CONTROL BOARD AND TRANSFER OF POWERS  
AND DUTIES TO TEXAS DEPARTMENT OF  
LICENSING AND REGULATION

SECTION 30.01. Section 1951.002, Occupations Code, is amended by adding Subdivision (6-a) to read as follows:

(6-a) "Department" means the Texas Department of Licensing and Regulation.

SECTION 30.02. Subchapter A, Chapter 1951, Occupations Code, is amended by adding Sections 1951.008 and 1951.009 to read as follows:

Sec. 1951.008. TEXAS DEPARTMENT OF LICENSING AND REGULATION. (a) The department shall administer this chapter. If in administering this chapter there is a conflict between a provision of this chapter and a provision of Chapter 51, the provision of Chapter 51 controls.

(b) A reference in this chapter to the board or a reference in other law to the Texas Structural Pest Control Board means the department.

Sec. 1951.009. ADVISORY COMMITTEE. The governor shall appoint an advisory committee of seven persons to advise the department in administering this chapter.

SECTION 30.03. On September 1, 2003, the following laws are repealed:

- (1) Sections 1951.002(2), 1951.007, and 1951.206, Occupations Code; and
- (2) Subchapters C, D, and F, Chapter 1951, Occupations Code.

SECTION 30.04. On September 1, 2003:

(1) all functions and activities relating to Chapter 1951, Occupations Code, performed by the Texas Structural Pest Control Board immediately before that date are transferred to the Texas Department of Licensing and Regulation;



(2) a rule or form adopted by the Texas Structural Pest Control Board that relates to Chapter 1951, Occupations Code, is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a reference in law or an administrative rule to the Texas Structural Pest Control Board that relates to Chapter 1951, Occupations Code, means the Texas Department of Licensing and Regulation;

(4) a complaint, investigation, or other proceeding before the Texas Structural Pest Control Board that is related to Chapter 1951, Occupations Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas Structural Pest Control Board in an action or proceeding to which the Texas Structural Pest Control Board is a party;

(5) all money, contracts, leases, property, and obligations of the Texas Structural Pest Control Board related to Chapter 1951, Occupations Code, are transferred to the Texas Department of Licensing and Regulation;

(6) all property in the custody of the Texas Structural Pest Control Board related to Chapter 1951, Occupations Code, is transferred to the Texas Department of Licensing and Regulation; and

(7) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Structural Pest Control Board related to Chapter 1951, Occupations Code, is transferred to the Texas Department of Licensing and Regulation.

SECTION 30.05. Not later than November 1, 2003, the governor shall appoint the advisory committee required by Section 1951.009, Occupations Code, as added by this Act.

ARTICLE 31. ABOLITION OF THE TEXAS STATE BOARD OF  
PLUMBING EXAMINERS AND TRANSFER OF POWERS  
AND DUTIES TO TEXAS DEPARTMENT OF  
LICENSING AND REGULATION

SECTION 31.01. Section 1301.002(1), Occupations Code, is amended to read as follows:

(1) "Department" [~~"Board"~~] means the Texas Department of Licensing and Regulation [~~State Board of Plumbing Examiners~~].

SECTION 31.02. Subchapter A, Chapter 1301, Occupations Code, is amended by adding Sections 1301.004 and 1301.005 to read as follows:

Sec. 1301.004. TEXAS DEPARTMENT OF LICENSING AND REGULATION. (a) The department shall administer this chapter. If in administering this chapter there is a conflict between a provision of this chapter and a provision of Chapter 51, the provision of Chapter 51 controls.

(b) A reference in this chapter to the board or a reference in other law to the Texas State Board of Plumbing Examiners means the department.

Sec. 1301.005. ADVISORY COMMITTEE. The governor shall appoint an advisory committee of seven persons to advise the department in administering this chapter.

SECTION 31.03. On September 1, 2003, the following laws are repealed:

(1) Sections 1301.003, 1301.204, 1301.252, 1301.301, and 1301.303, Occupations Code; and

(2) Subchapter C, Chapter 1301, Occupations Code.

SECTION 31.04. On September 1, 2003:

(1) all functions and activities relating to Chapter 1301, Occupations Code, performed by the Texas State Board of Plumbing Examiners immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the Texas State Board of Plumbing Examiners that relates to Chapter 1301, Occupations Code, is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a reference in law or an administrative rule to the Texas State Board of Plumbing Examiners that relates to Chapter 1301, Occupations Code, means the Texas Department of Licensing and Regulation;

(4) a complaint, investigation, or other proceeding before the Texas State Board of Plumbing Examiners that is related to Chapter 1301, Occupations Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas State Board of Plumbing Examiners in an action or proceeding to which the Texas State Board of Plumbing Examiners is a party;

(5) all money, contracts, leases, property, and obligations of the Texas State Board of Plumbing Examiners related to Chapter 1301, Occupations Code, are transferred to the Texas Department of Licensing and Regulation;

(6) all property in the custody of the Texas State Board of Plumbing Examiners related to Chapter 1301, Occupations Code, is transferred to the Texas Department of Licensing and Regulation; and

(7) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas State Board of Plumbing Examiners related to Chapter 1301, Occupations Code, is transferred to the Texas Department of Licensing and Regulation.

SECTION 31.05. Not later than November 1, 2003, the governor shall appoint the advisory committee required by Section 1301.005, Occupations Code, as added by this Act.

ARTICLE 32. ABOLITION OF THE TEXAS COSMETOLOGY  
COMMISSION AND TRANSFER OF POWERS AND  
DUTIES TO TEXAS DEPARTMENT OF  
LICENSING AND REGULATION

SECTION 32.01. Section 1602.001, Occupations Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Department" means the Texas Department of Licensing and Regulation.

SECTION 32.02. Subchapter A, Chapter 1602, Occupations Code, is amended by adding Sections 1602.005 and 1602.006 to read as follows:

Sec. 1602.005. TEXAS DEPARTMENT OF LICENSING AND REGULATION. (a) The department shall administer this chapter. If in administering this chapter there is a conflict between a provision of this chapter and a provision of Chapter 51, the provision of Chapter 51 controls.

(b) A reference in this chapter to the commission or a reference in other law to the Texas Cosmetology Commission means the department.

Sec. 1602.006. ADVISORY COMMITTEE. The governor shall appoint an advisory committee of seven persons to advise the department in administering this chapter.

SECTION 32.03. On September 1, 2003, the following laws are repealed:

- (1) Sections 1602.001(1), 1602.004, and 1602.152, Occupations Code; and
- (2) Subchapters B, C, and E, Chapter 1602, Occupations Code.

SECTION 32.04. On September 1, 2003:

(1) all functions and activities relating to Chapter 1602, Occupations Code, performed by the Texas Cosmetology Commission immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the Texas Cosmetology Commission that relates to Chapter 1602, Occupations Code, is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a reference in law or an administrative rule to the Texas Cosmetology Commission that relates to Chapter 1602, Occupations Code, means the Texas Department of Licensing and Regulation;

(4) a complaint, investigation, or other proceeding before the Texas Cosmetology Commission that is related to Chapter 1602, Occupations Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas Cosmetology Commission in an action or proceeding to which the Texas Cosmetology Commission is a party;

(5) all money, contracts, leases, property, and obligations of the Texas Cosmetology Commission related to Chapter 1602, Occupations Code, are transferred to the Texas Department of Licensing and Regulation;

(6) all property in the custody of the Texas Cosmetology Commission related to Chapter 1602, Occupations Code, is transferred to the Texas Department of Licensing and Regulation; and

(7) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Cosmetology Commission related to Chapter 1602, Occupations Code, is transferred to the Texas Department of Licensing and Regulation.

SECTION 32.05. Not later than November 1, 2003, the governor shall appoint the advisory committee required by Section 1602.006, Occupations Code, as added by this Act.

ARTICLE 33. TRANSFER OF THE CHAPTER 1201, OCCUPATIONS  
CODE POWERS AND DUTIES OF THE TEXAS DEPARTMENT  
OF HOUSING AND COMMUNITY AFFAIRS TO  
TEXAS DEPARTMENT OF LICENSING  
AND REGULATION

SECTION 33.01. Section 1201.003(7), Occupations Code, is amended to read as follows:

(7) "Department" means the Texas Department of Licensing and Regulation [~~Housing and Community Affairs~~].

SECTION 33.02. Subchapter A, Chapter 1201, Occupations Code, is amended by adding Section 1201.009 to read as follows:

Sec. 1201.009. ADVISORY COMMITTEE. The governor shall appoint an advisory committee of seven persons to advise the department in administering this chapter.

SECTION 33.03. On September 1, 2003:

(1) all functions and activities relating to Chapter 1201, Occupations Code, performed by the Texas Department of Housing and Community Affairs immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the Texas Department of Housing and Community Affairs that relates to Chapter 1201, Occupations Code, is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a reference in law or an administrative rule to the Texas Department of Housing and Community Affairs that relates to Chapter 1201, Occupations Code, means the Texas Department of Licensing and Regulation;

(4) a complaint, investigation, or other proceeding before the Texas Department of Housing and Community Affairs that is related to Chapter 1201, Occupations Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas Department of Housing and Community Affairs in an action or proceeding to which the Texas Department of Housing and Community Affairs is a party;

(5) all money, contracts, leases, property, and obligations of the Texas Department of Housing and Community Affairs related to Chapter 1201, Occupations Code, are transferred to the Texas Department of Licensing and Regulation;

(6) all property in the custody of the Texas Department of Housing and Community Affairs related to Chapter 1201, Occupations Code, is transferred to the Texas Department of Licensing and Regulation; and

(7) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Department of Housing and Community Affairs related to Chapter 1201, Occupations Code, is transferred to the Texas Department of Licensing and Regulation.

SECTION 33.04. Not later than November 1, 2003, the governor shall appoint the advisory committee required by Section 1201.009, Occupations Code, as added by this Act.

ARTICLE 34. ABOLITION OF THE STATE BOARD OF BARBER  
EXAMINERS AND TRANSFER OF POWERS AND  
DUTIES TO TEXAS DEPARTMENT OF  
LICENSING AND REGULATION

SECTION 34.01. Section 1601.001, Occupations Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Department" means the Texas Department of Licensing and Regulation.

SECTION 34.02. Subchapter A, Chapter 1601, Occupations Code, is amended by adding Sections 1601.005 and 1601.006 to read as follows:

Sec. 1601.005. TEXAS DEPARTMENT OF LICENSING AND REGULATION. (a) The department shall administer this chapter. If in administering this chapter there is a conflict between a provision of this chapter and a provision of Chapter 51, the provision of Chapter 51 controls.

(b) A reference in this chapter to the board or a reference in other law to the State Board of Barber Examiners means the department.

Sec. 1601.006. ADVISORY COMMITTEE. The governor shall appoint an advisory committee of seven persons to advise the department in administering this chapter.

SECTION 34.03. On September 1, 2003, the following laws are repealed:

- (1) Sections 1601.001(3), 1601.004, and 1601.153, Occupations Code; and
- (2) Subchapters B, C, and E, Chapter 1601, Occupations Code.

SECTION 34.04. On September 1, 2003:

(1) all functions and activities relating to Chapter 1601, Occupations Code, performed by the State Board of Barber Examiners immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the State Board of Barber Examiners that relates to Chapter 1601, Occupations Code, is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a reference in law or an administrative rule to the State Board of Barber Examiners that relates to Chapter 1601, Occupations Code, means the Texas Department of Licensing and Regulation;

(4) a complaint, investigation, or other proceeding before the State Board of Barber Examiners that is related to Chapter 1601, Occupations Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the State Board of Barber Examiners in an action or proceeding to which the State Board of Barber Examiners is a party;

(5) all money, contracts, leases, property, and obligations of the State Board of Barber Examiners related to Chapter 1601, Occupations Code, are transferred to the Texas Department of Licensing and Regulation;

(6) all property in the custody of the State Board of Barber Examiners related to Chapter 1601, Occupations Code, is transferred to the Texas Department of Licensing and Regulation; and

(7) the unexpended and unobligated balance of any money appropriated by the legislature for the State Board of Barber Examiners related to Chapter 1601, Occupations Code, is transferred to the Texas Department of Licensing and Regulation.

SECTION 34.05. Not later than November 1, 2003, the governor shall appoint the advisory committee required by Section 1601.006, Occupations Code, as added by this Act.

ARTICLE 35. ABOLITION OF THE TEXAS BOARD OF PROFESSIONAL  
LAND SURVEYING AND TRANSFER OF POWERS AND  
DUTIES TO TEXAS DEPARTMENT OF  
LICENSING AND REGULATION

SECTION 35.01. Section 1071.002, Occupations Code, is amended by adding Subdivision (3-a) to read as follows:

(3-a) "Department" means the Texas Department of Licensing and Regulation.

SECTION 35.02. Subchapter A, Chapter 1071, Occupations Code, is amended by adding Sections 1071.005 and 1071.006 to read as follows:

Sec. 1071.005. TEXAS DEPARTMENT OF LICENSING AND REGULATION. (a) The department shall administer this chapter. If in administering this chapter there is a conflict between a provision of this chapter and a provision of Chapter 51, the provision of Chapter 51 controls.

(b) A reference in this chapter to the board or a reference in other law to the Texas Board of Professional Land Surveyors means the department.

Sec. 1071.006. ADVISORY COMMITTEE. The governor shall appoint an advisory committee of seven persons to advise the department in administering this chapter.

SECTION 35.03. On September 1, 2003, the following laws are repealed:

- (1) Sections 1071.002(1) and 1071.003, Occupations Code; and
- (2) Subchapters B, C, and E, Chapter 1071, Occupations Code.

SECTION 35.04. On September 1, 2003:

(1) all functions and activities relating to Chapter 1071, Occupations Code, performed by the Texas Board of Professional Land Surveying immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the Texas Board of Professional Land Surveying that relates to Chapter 1071, Occupations Code, is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a reference in law or an administrative rule to the Texas Board of Professional Land Surveying that relates to Chapter 1071, Occupations Code, means the Texas Department of Licensing and Regulation;

(4) a complaint, investigation, or other proceeding before the Texas Board of Professional Land Surveying that is related to Chapter 1071, Occupations Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as

appropriate and without a change in status, the position of the Texas Board of Professional Land Surveying in an action or proceeding to which the Texas Board of Professional Land Surveying is a party;

(5) all money, contracts, leases, property, and obligations of the Texas Board of Professional Land Surveying related to Chapter 1071, Occupations Code, are transferred to the Texas Department of Licensing and Regulation;

(6) all property in the custody of the Texas Board of Professional Land Surveying related to Chapter 1071, Occupations Code, is transferred to the Texas Department of Licensing and Regulation; and

(7) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Board of Professional Land Surveying related to Chapter 1071, Occupations Code, is transferred to the Texas Department of Licensing and Regulation.

SECTION 35.05. Not later than November 1, 2003, the governor shall appoint the advisory committee required by Section 1071.006, Occupations Code, as added by this Act.

ARTICLE 36. ABOLITION OF THE TEXAS BOARD OF PROFESSIONAL  
GEOSCIENTISTS AND TRANSFER OF POWERS AND  
DUTIES TO TEXAS DEPARTMENT OF  
LICENSING AND REGULATION

SECTION 36.01. Section 1.02(1), Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Department" [~~"Board"~~] means the Texas Department of Licensing and Regulation [~~Board of Professional Geoscientists~~].

SECTION 36.02. Subchapter A, Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes), is amended by adding Sections 1.05 and 1.06 to read as follows:

Sec. 1.05. TEXAS DEPARTMENT OF LICENSING AND REGULATION. (a) The department shall administer this Act. If in administering this Act there is a conflict between a provision of this Act and a provision of Chapter 51, the provision of Chapter 51 controls.

(b) A reference in this Act to the board or a reference in other law to the Texas Board of Professional Geoscientists means the department.

Sec. 1.06. ADVISORY COMMITTEE. The governor shall appoint an advisory committee of seven persons to advise the department in administering this Act.

SECTION 36.03. On September 1, 2003, the following laws are repealed:

(1) Sections 1.03, 3.01, 3.02(a), 3.03, 3.04, 3.05, and 3.06, Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes); and

(2) Subchapters B and E, Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes).

SECTION 36.04. On September 1, 2003:

(1) all functions and activities relating to the Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes), performed by the Texas Board of Professional Geoscientists immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the Texas Board of Professional Geoscientists that relates to the Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes), is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a reference in law or an administrative rule to the Texas Board of Professional Geoscientists that relates to the Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes), means the Texas Department of Licensing and Regulation;

(4) a complaint, investigation, or other proceeding before the Texas Board of Professional Geoscientists that is related to the Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes), is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas Board of Professional Geoscientists in an action or proceeding to which the Texas Board of Professional Geoscientists is a party;

(5) all money, contracts, leases, property, and obligations of the Texas Board of Professional Geoscientists related to the Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes), are transferred to the Texas Department of Licensing and Regulation;

(6) all property in the custody of the Texas Board of Professional Geoscientists related to the Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes), is transferred to the Texas Department of Licensing and Regulation; and

(7) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Board of Professional Geoscientists related to the Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes), is transferred to the Texas Department of Licensing and Regulation.

SECTION 36.05. Not later than November 1, 2003, the governor shall appoint the advisory committee required by Section 1.06, Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes), as added by this Act.

#### **Floor Amendment No. 24**

Amend Floor Amendment No. 23 to **CSSB 279** by striking ARTICLE 33 of the amendment (page 12, line 6 through page 14, line 8).

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 279** before appointment.

There were no motions offered.



The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Jackson, Chair; Duncan, Ellis, Armbrister, and Whitmire.

### **SENATE BILL 340 WITH HOUSE AMENDMENTS**

Senator Staples called **SB 340** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer, Senator Lucio in Chair, laid the bill and the House amendments before the Senate.

#### **Floor Amendment No. 1**

Amend **SB 340** in SECTION 5 of the bill, at the end of proposed Section 22.29, Tax Code (House committee printing page 8, following line 8), by adding the following:

(e) If the court determines that the person is not liable for a penalty under this section or if the appraisal district agrees to settle the proceeding, the court shall award the person reasonable attorney's fees payable by the appraisal district.

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

Amend **SB 340** as follows:

(1) In the recital to SECTION 1 of the bill (House committee printing page 1, line 6), strike "(i)" and substitute "(j)".

(2) At the end of SECTION 1 of the bill, following proposed Section 22.01(i), Tax Code (House committee printing page 3, following line 8), add the following:

(j) Subsection (a) does not apply to property that is exempt from taxation.

(3) Between SECTIONS 1 and 2 of the bill (House committee printing page 3, between lines 8 and 9), insert the following SECTION, appropriately numbered, and renumber the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Section 22.02, Tax Code, is amended to read as follows:

Sec. 22.02. RENDITION OF PROPERTY LOSING EXEMPTION DURING TAX YEAR OR FOR WHICH EXEMPTION APPLICATION IS DENIED. (a) If an exemption applicable to a property on January 1 terminates during the tax year, the person who owns or acquires the property on the date applicability of the exemption terminates shall render the property for taxation within 30 days after the date of termination.

(b) If the chief appraiser denies an application for an exemption for property described by Section 22.01(a), the person who owns the property on the date the application is denied shall render the property for taxation in the manner provided by Section 22.01 within 30 days after the date of denial.

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

Amend **SB 340** on third reading as follows:

(1) Between the enacting clause and SECTION 1 of the bill (House committee printing page 1, between lines 4 and 5), insert the following appropriately numbered SECTIONS:

SECTION \_\_\_\_ . Section 1.085, Tax Code, is amended by amending Subsection

(b) and adding Subsections (e)-(g) to read as follows:

(b) An agreement between a chief appraiser and a property owner must:

- (1) be in writing;
- (2) be signed by the chief appraiser and the property owner; and
- (3) specify:
  - (A) the medium of communication;
  - (B) the type of communication covered; ~~and~~
  - (C) the means for protecting the security of a communication;
  - (D) the means for confirming delivery of a communication; and
  - (E) the electronic mail address of the property owner or person

designated to represent the property owner under Section 1.111, as applicable.

(e) The comptroller by rule:

(1) shall prescribe acceptable media, formats, content, and methods for the electronic transmission of notices required by Section 25.19; and

(2) may prescribe acceptable media, formats, content, and methods for the electronic transmission of other notices, renditions, and applications.

(f) In an agreement entered into under this section, a chief appraiser may select the medium, format, content, and method to be used by the appraisal district from among those prescribed by the comptroller under Subsection (e).

(g) Notwithstanding Subsection (a), if a property owner whose property is included in 25 or more accounts in the appraisal records of the appraisal district requests the chief appraiser to enter into an agreement for the delivery of the notice required by Section 25.19 in an electronic format, the chief appraiser must enter into an agreement under this section for that purpose and shall deliver the notice in accordance with an electronic medium, format, content, and method prescribed by the comptroller under Subsection (e).

SECTION \_\_\_\_\_. Section 1.09, Tax Code, is amended to read as follows:

Sec. 1.09. AVAILABILITY OF FORMS. When a property owner is required by this title to use a form, the office or agency with which the form is filed shall make printed and electronic versions of the forms readily and timely available and shall furnish a property owner a form without charge.

(2) Strike SECTION 9 of the bill (House committee printing page 11, lines 1-13) and substitute the following appropriately numbered SECTION:

SECTION \_\_\_\_\_. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect January 1, 2004, and applies only to the rendition of property for ad valorem tax purposes for a tax year that begins on or after that date.

(b) Sections 1.085 and 1.09, Tax Code, as amended by this Act, take effect January 1, 2005.

(c) Subsection (c), Section 22.23, Tax Code, as added by this Act, takes effect September 1, 2003, and applies to the rendition of property for ad valorem tax purposes for the 2003 tax year.

(d) Subsection (f), Section 23.23, Tax Code, as added by this Act, applies to the appraisal of property for a tax year beginning on or after the effective date of this Act regardless of whether the casualty or mold or water damage occurred before, on, or after the effective date of this Act.

(e) Except as provided by Subsection (f) of this section, the changes in law made by this Act to Section 1.085, Tax Code, apply only to an agreement between a chief appraiser and a property owner entered into on or after January 1, 2005. An agreement between a chief appraiser and a property owner entered into before January 1, 2005, is governed by the law in effect on the date the agreement was entered into, and the former law is continued in effect for that purpose.

(f) Notwithstanding Subsection (b) of this section, in the case of an appraisal district established for a county with a population of 500,000 or less, the changes in law made by this Act to Section 1.085, Tax Code, apply only to an agreement between the chief appraiser and a property owner entered into on or after January 1, 2006. An agreement between the chief appraiser of such an appraisal district and a property owner entered into before January 1, 2006, is governed by the law in effect on the date the agreement was entered into, and the former law is continued in effect for that purpose.

(g) Notwithstanding Subsection (b) of this section, an appraisal district established in a county with a population of 500,000 or less or a taxing unit located in a county with a population of 500,000 or less is not required to comply with Section 1.09, Tax Code, as amended by this Act, until January 1, 2006.

(3) Renumber the existing SECTIONS of the bill appropriately.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 340** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Staples, Chair; Averitt, Barrientos, Janek, and West.

### **SENATE BILL 277 WITH HOUSE AMENDMENTS**

Senator Ellis called **SB 277** from the President's table for consideration of the House amendments to the bill.

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

#### **Floor Amendment No. 1**

Amend **SB 277** in SECTION 17, Sec. 1001.252, by adding new subsections (k), (l), and (m) to read:

(k) Except as provided by Subsection (1), a complaint filed with the board is public information.

(l) For any frivolous complaint, the license holder's name and other personal information on the complaint is not public information and must be redacted.

(m) In this section, "frivolous complaint" means a complaint that the executive director and investigator, with board approval, determined:

- (1) was made for the purpose of harassment; and
- (2) does not demonstrate harm to any person.

### **Floor Amendment No. 2**

Amend **SB 277** in SECTION 24, by deleting Sec. 1001.353 and replacing it with the following:

Sec. 1001.353. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1-1/2 times the normally [the] required renewal fee and any applicable increase in fees as required by Section 1001.206 [a penalty fee set by the board].

(c) A person whose license has expired for more than 90 days but less than two years may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee and any applicable increase in fees as required by Section 1001.206 for each delinquent year or part of year [all unpaid renewal fees and a penalty fee set by the board].

(d) A person whose license has been expired for two years or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license [that are in effect at the time the person applies].

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

Amend **SB 277** as follows:

(1) Strike SECTION 2 of the bill (House committee printing page 1, line 18, through page 4, line 1) and substitute the following:

SECTION 2. Section 1001.057, Occupations Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) A person who claims an exemption under this section and who is determined to have directly or indirectly represented the person as legally qualified to engage in the practice of engineering or who is determined to have violated Section 1001.301 may not claim an exemption until the 10th anniversary of the date the person made that representation or violated that section.

(d) This section does not prohibit:

(1) an engineer who intends to incorporate manufactured products into a fixed work, system, or facility that is being designed by the engineer from requiring the manufacturer to have the plans or specifications for the products signed and sealed by an engineer; or

(2) the board from requiring by rule that certain manufactured products delivered to or used by the public be designed by an engineer and that the plans or specifications for the products be signed and sealed by an engineer.

(2) In SECTION 13 of the bill, in amended Section 1001.204(a)(7), Occupations Code (House committee printing page 12, line 5), strike "and".

(3) In SECTION 13 of the bill, in amended Section 1001.204(a)(8), Occupations Code, between "firm" and the underlined period (House committee printing page 12, line 6), insert the following:

"; and

(9) inactive status fee"

(4) Between SECTIONS 13 and 14 of the bill (House committee printing page 12, between lines 6 and 7), insert the following SECTION, appropriately numbered:

SECTION \_\_\_\_\_. Section 1001.206(c), Occupations Code, is amended to read as follows:

(c) The fee increase imposed by Subsection (a) does not apply to an engineer who:

(1) meets the qualifications for an exemption under Section 1001.057 or 1001.058 but does not claim that exemption; [~~or~~]

(2) is disabled as described by Section 1001.205; or

(3) is on inactive status as provided by Section 1001.355.

(5) In the recital to SECTION 15 of the bill (House committee printing page 13, line 20), strike "1001.214, 1001.215, and 1001.216" and substitute "1001.214 and 1001.215".

(6) In SECTION 15 of the bill (House committee printing page 15, line 4, through page 16, line 17), strike proposed Section 1001.216, Occupations Code.

(7) In the recital to SECTION 25 of the bill (House committee printing page 28, line 21), strike "Section 1001.354" and substitute "Sections 1001.354 and 1001.355".

(8) At the end of SECTION 25 of the bill, following proposed Section 1001.354, Occupations Code (House committee printing page 29, following line 1), add the following:

Sec. 1001.355. INACTIVE STATUS. (a) An engineer may request inactive status at any time before the expiration date of the person's license. A license holder on inactive status may not practice engineering.

(b) A license holder on inactive status must pay an annual fee set by the board.

(c) A license holder on inactive status is not required to:

(1) comply with the continuing education requirements adopted by the board; or

(2) take an examination for reinstatement to active status.

(d) To return to active status, a license holder on inactive status must:

(1) file with the board a written notice requesting reinstatement to active status;

(2) pay the fee for the annual renewal of the license and the fee increase required by Section 1001.206; and

(3) provide evidence satisfactory to the board that the person has complied with the continuing education requirements adopted by the board.

(9) Between SECTIONS 28 and 29 of the bill (House committee printing page 31, between lines 9 and 10), insert the following SECTIONS, appropriately numbered:

SECTION \_\_\_\_\_. Section 2, Self-Directed Semi-Independent Agency Project Act (Article 8930, Revised Statutes), is amended to read as follows:

Sec. 2. AGENCY PARTICIPATION. The Texas Board of Professional Engineers as a part of the following agencies shall be continued as an agency that is part of the pilot project ~~[created by this Act]~~:

- (1) the Texas State Board of Public Accountancy;
- (2) the Texas Board of Professional Engineers; and
- (3) the Texas Board of Architectural Examiners.

SECTION \_\_\_\_\_. Section 4(c), Self-Directed Semi-Independent Agency Project Act (Article 8930, Revised Statutes), is amended to read as follows:

(c) This Act is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, this Act expires September 1, ~~2009~~ [2003].

SECTION \_\_\_\_\_. Section 6(c), Self-Directed Semi-Independent Agency Project Act (Article 8930, Revised Statutes), is amended to read as follows:

(c) The Texas State Board of Public Accountancy shall annually remit \$500,000 to the general revenue fund, the Texas Board of Professional Engineers shall annually remit ~~\$373,900~~ [\$50,000] to the general revenue fund; and the Texas Board of Architectural Examiners shall annually remit \$700,000 to the general revenue fund.

SECTION \_\_\_\_\_. Section 15(b), Self-Directed Semi-Independent Agency Project Act (Article 8930, Revised Statutes), is amended to read as follows:

(b) If a state agency no longer has status under this Act as a self-directed semi-independent project agency either because of the expiration of this Act or for any other reason, ownership of any property or other asset acquired by the agency during the time the agency participated in the pilot project, including unexpended and unobligated money ~~[fees]~~ in a deposit account in the Texas Treasury Safekeeping Trust Company, shall be transferred to the state.

SECTION \_\_\_\_\_. (a) On the effective date of this Act, the Texas State Board of Public Accountancy and the Texas Board of Architectural Examiners are no longer self-directed semi-independent project agencies under the Self-Directed Semi-Independent Agency Project Act (Article 8930, Revised Statutes).

(b) The change in law made by this Act does not affect the obligation of the Texas State Board of Public Accountancy and the Texas Board of Architectural Examiners to remit money to the general revenue fund for the state fiscal year ending August 31, 2003, under Section 6(c), Self-Directed Semi-Independent Agency Project Act (Article 8930, Revised Statutes), as that law existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(10) Renumber the existing SECTIONS of the bill accordingly.

### Floor Amendment No. 5

Amend Floor Amendment No. 4 to **SB 277** as follows:

- (1) On page 1, strike lines 2-16 of the amendment.
- (2) On page 2, strike lines 4 and 5 of the amendment.

### Floor Amendment No. 6

Amend **SB 277** by adding four new SECTIONS, appropriately numbered, to read as follows:

SECTION \_\_\_\_\_. Subsection (e), Section 1001.004, Occupations Code, is amended to read as follows:

(e) This chapter does not:

(1) prevent a person from identifying the person in the name and trade of any engineers' labor organization with which the person is affiliated;

(2) prohibit or otherwise restrict a person from giving testimony or preparing an exhibit or document for the sole purpose of being placed in evidence before an administrative or judicial tribunal, subject to the board's disciplinary powers under Subchapter J regarding negligence, incompetency, or misconduct in the practice of engineering;

(3) repeal or amend a law affecting or regulating a licensed state land surveyor; or

(4) affect or prevent the practice of any other legally recognized profession by a member of the profession who is licensed by the state or under the state's authority.

SECTION \_\_\_\_\_. Section 1001.402, Occupations Code, is amended to read as follows:

Sec. 1001.402. ENFORCEMENT BY CERTAIN PUBLIC OFFICIALS. A public official of the state or of a political subdivision of the state who is responsible for enforcing laws that affect the practice of engineering may accept a plan, specification, or other related document that requires the application of engineering judgment only if the plan, specification, or other document was prepared by an engineer, as evidenced by the engineer's seal.

SECTION \_\_\_\_\_. Section 1001.053, Occupations Code, is amended to read as follows:

Sec. 1001.053. PUBLIC WORKS. The following work is exempt from this chapter:

(1) a public work that involves structural, electrical, or mechanical engineering, if the contemplated expense for the completed project is \$8,000 or less; or

(2) a public work that does not involve structural, electrical, or mechanical engineering, if the contemplated expense for the completed project is \$20,000 or less [~~or~~]

~~[(3) road maintenance or improvement undertaken by the commissioners court of a county].~~

SECTION \_\_\_\_\_. Chapter 1001, Occupations Code, is amended by adding Subchapter M to read as follows:

#### SUBCHAPTER M. ADVISORY OPINIONS

Sec. 1001.601. BOARD ADVISORY OPINIONS. (a) On its own initiative or at the request of any interested person, the board shall prepare a written advisory opinion about an interpretation of this chapter or the application of this chapter to a person in regard to a specified existing or hypothetical factual situation. The board shall respond to requests for opinions within 180 days or affirmatively state its reason for not responding to the request.

Sec. 1001.603. MAINTENANCE OF OPINIONS; SUMMARY. The board shall:

(1) number and classify each advisory opinion issued under this subchapter;  
and

(2) annually compile a summary of the opinions in a single reference document that is available on the internet.

Sec. 1001.604. ATTORNEY GENERAL'S OPINIONS. The authority of the board to issue an advisory opinion under this subchapter does not affect the authority of the attorney general to issue an opinion as authorized by law.

Sec. 1001.605. RELIANCE ON ADVISORY OPINION. It is a defense to prosecution or to imposition of a civil penalty that a person reasonably relied on a written advisory opinion of the board relating to:

(1) the provision of the law the person is alleged to have violated; or

(2) a fact situation that is substantially similar to the fact situation in which the person is involved.

SECTION \_\_\_\_\_. (a) Except as otherwise provided by this section, this Act takes effect September 1, 2003.

(b) The Texas Board of Professional Engineers is not required to issue an advisory opinion under Subchapter M, Chapter 1001, Occupations Code, as added by this Act, before January 1, 2004.

### **Floor Amendment No. 7**

Amend **SB 277** between SECTIONS 3 and 4 of the bill (House committee printing page 4, between lines 17 and 18) by inserting the following SECTION, appropriately numbered, and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter B, Chapter 1001, Occupations Code, is amended by adding Section 1001.065 to read as follows:

Sec. 1001.065. CERTAIN NASA-RELATED ACTIVITIES. This chapter does not:

(1) apply to a business entity or the business entity's employees to the extent that the entity's products or services consist of space vehicles or space services provided to, or space technology transfer programs required by, the National Aeronautics and Space Administration; or

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

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

**SB 277** is amended on third reading by striking the language in Second Reading Floor Amendment No. 5 amending Sec. 1001.053, Occupations Code and substituting the following:

SECTION \_\_\_\_\_. Section 1001.053, Occupations Code, is amended to read as follows:

Sec. 1001.053. PUBLIC WORKS. The following work is exempt from this chapter:



(1) a public work that involves structural, electrical, or mechanical engineering, if the contemplated expense for the completed project is \$20,000 [~~\$8,000~~] or less;

(2) a public work that does not involve structural, electrical, or mechanical engineering, if the contemplated expense for the completed project is \$20,000 or less; or

(3) road maintenance or improvement undertaken by the commissioners court of a county.

#### **Floor Amendment No. 4 on Third Reading**

Amend **SB 277** on third reading as follows:

(1) On page 15, line 9 between, "board" and "appointed" insert "and one practicing architectural engineer".

(2) On page 15, line 12, between "Examiners" and "appointed", insert "and one practicing architect".

#### **Floor Amendment No. 5 on Third Reading**

Amend **SB 277** on third reading by striking the sections of the bill added by Item (9) of Amendment No. 4 by Smith (page 2, line 22, through page 3, line 23, of the amendment) and by inserting the following SECTIONS, appropriately numbered:

SECTION \_\_\_\_\_. Section 2, Self-Directed Semi-Independent Agency Project Act (Article 8930, Revised Statutes), is amended to read as follows:

Sec. 2. AGENCY PARTICIPATION. The Texas Board of Professional Engineers [~~following agencies~~] shall be the only state agency that is part of the pilot project created by this Act[~~:~~

~~[(1) the Texas State Board of Public Accountancy;~~

~~[(2) the Texas Board of Professional Engineers; and~~

~~[(3) the Texas Board of Architectural Examiners].~~

SECTION \_\_\_\_\_. Section 4(c), Self-Directed Semi-Independent Agency Project Act (Article 8930, Revised Statutes), is amended to read as follows:

(c) This Act is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, this Act expires September 1, 2009 [~~2003~~].

SECTION \_\_\_\_\_. Section 6(c), Self-Directed Semi-Independent Agency Project Act (Article 8930, Revised Statutes), is amended to read as follows:

(c) The [~~Texas State Board of Public Accountancy shall annually remit \$500,000 to the general revenue fund, the~~] Texas Board of Professional Engineers shall annually remit \$373,900 [~~\$50,000~~] to the general revenue fund[~~, and the Texas Board of Architectural Examiners shall annually remit \$700,000 to the general revenue fund~~].

SECTION \_\_\_\_\_. Section 15(b), Self-Directed Semi-Independent Agency Project Act (Article 8930, Revised Statutes), is amended to read as follows:

(b) If a state agency no longer has status under this Act as a self-directed semi-independent project agency either because of the expiration of this Act or for any other reason, ownership of any property or other asset acquired by the agency

during the time the agency participated in the pilot project, including unexpended and unobligated money [~~fees~~] in a deposit account in the Texas Treasury Safekeeping Trust Company, shall be transferred to the state.

SECTION \_\_\_\_\_. (a) On the effective date of this Act, the Texas State Board of Public Accountancy and the Texas Board of Architectural Examiners are no longer self-directed semi-independent project agencies under the Self-Directed Semi-Independent Agency Project Act (Article 8930, Revised Statutes).

(b) The change in law made by this Act does not affect the obligation of the Texas State Board of Public Accountancy and the Texas Board of Architectural Examiners to remit money to the general revenue fund for the state fiscal year ending August 31, 2003, under Section 6(c), Self-Directed Semi-Independent Agency Project Act (Article 8930, Revised Statutes), as that law existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 277** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ellis, Chair; Wentworth, Nelson, Ratliff, and Shapleigh.

### SENATE BILL 1010 WITH HOUSE AMENDMENTS

Senator West called **SB 1010** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer, Senator Lucio in Chair, laid the bill and the House amendments before the Senate.

#### Amendment

Amend **SB 1010** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to public and common nuisances; providing a penalty.

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

SECTION 1. Subchapter A, Chapter 125, Civil Practice and Remedies Code, is amended by amending Section 125.001 and adding Section 125.0015 to read as follows:

Sec. 125.001. DEFINITIONS. In this chapter:

(1) "Common nuisance" is a nuisance described by Section 125.0015.

(2) "Public nuisance" is a nuisance described by Section 125.062 or 125.063.

(3) "Multiunit residential property" means improved real property with at least three dwelling units, including an apartment building, condominium, hotel, or motel. The term does not include:

(A) a property in which each dwelling unit is occupied by the owner of the property; or

(B) a single-family home or duplex.

Sec. 125.0015. COMMON NUISANCE. (a) A person who knowingly maintains a place to which persons habitually go for the following purposes maintains a common nuisance:

(1) ~~[prostitution or gambling in violation of the Penal Code;~~

~~[(2)] discharge of a firearm in a public place as prohibited by the [in violation of Section 42.01(a)(9),] Penal Code;~~

~~(2) [(3)] reckless discharge of a firearm as prohibited by the [described by Section 42.12,] Penal Code;~~

~~(3) [(4)] engaging in organized criminal activity as a member of a combination as prohibited by the [described by Section 71.02,] Penal Code; [or]~~

~~(4) [(5)] delivery, possession, manufacture, or use of a controlled substance in violation of Chapter 481, Health and Safety Code;~~

(5) gambling, gambling promotion, or communicating gambling information as prohibited by the Penal Code;

(6) prostitution, promotion of prostitution, or aggravated promotion of prostitution as prohibited by the Penal Code;

(7) compelling prostitution as prohibited by the Penal Code; or

(8) commercial manufacture, commercial distribution, or commercial exhibition of obscene material as prohibited by the Penal Code.

(b) A person maintains a common nuisance if the person:

(1) knowingly maintains a multiunit residential property ~~[described by Subsection (e)]~~ to which persons habitually go to commit the following acts:

(A) aggravated assault as described by Section 22.02, Penal Code;

(B) sexual assault as described by Section 22.011, Penal Code;

(C) aggravated sexual assault as described by Section 22.021, Penal Code;

(D) robbery as described by Section 29.02, Penal Code;

(E) aggravated robbery as described by Section 29.03, Penal Code; ~~[or]~~

(F) unlawfully carrying a weapon as described by Section 46.02, Penal Code; ~~[and]~~

(G) murder as described by Section 19.02, Penal Code; or

(H) capital murder as described by Section 19.03, Penal Code; and

(2) has failed to make reasonable attempts to abate such acts.

~~[(e) Subsection (b) applies only to a multiunit residential property, as that term is defined by Section 125.041, that is located in a municipality.]~~

SECTION 2. Section 125.002, Civil Practice and Remedies Code, is amended by amending Subsections (b) and (c) and adding Subsections (d)-(g) to read as follows:

(b) A person may bring a suit under Subsection (a) against any person who maintains, owns, uses, or is a party to the use of a place for purposes constituting a nuisance under this subchapter and may bring an action in rem against the place itself.

(c) Service of any order, notice, process, motion, or ruling of the court on the attorney of record of a cause pending under this subchapter is sufficient service of the party represented by an attorney.

(d) A person who violates a temporary or permanent injunctive order under this subchapter is subject to the following sentences for civil contempt:

(1) a fine of not less than \$1,000 or more than \$10,000;

(2) confinement in jail for a term of not less than 10 or more than 30 days;

or

(3) both fine and confinement.

(e) If judgment is in favor of the petitioner, the court shall grant an injunction ordering the defendant to abate the nuisance and enjoining the defendant from maintaining or participating in the nuisance and may include in its order reasonable requirements to prevent the use or maintenance of the place as a nuisance. If the petitioner brings an action in rem, the judgment is a judgment in rem against the property as well as a judgment against the defendant. The judgment must order that the place where the nuisance exists be closed for one year after the date of judgment unless the defendant or the real property owner, lessee, or tenant of the property posts bond.

(f) ~~(e)~~ The bond must:

(1) be payable to the state at the county seat of the county in which the nuisance exists;

(2) be in the penal sum of \$10,000;

(3) have sufficient sureties approved by the court; and

(4) be conditioned that the property will not be used or permitted to be used for prostitution or gambling in violation of the Penal Code or for delivery, possession, manufacture, or use of a controlled substance in violation of Chapter 481, Health and Safety Code.

(g) In an action brought under this chapter, the petitioner may file a notice of lis pendens in the office of the county clerk. If the petitioner files the notice, a subsequent purchaser or mortgagee who acquires an interest in the property takes the property subject to the enforcement proceeding and subsequent orders of the court.

SECTION 3. Section 125.003(c), Civil Practice and Remedies Code, is amended to read as follows:

(c) A person may not continue the enjoined activity pending appeal or trial on the merits of an injunctive order entered in a suit brought under this subchapter. Not later than the 90th day after the date of the injunctive order, the appropriate court of appeals shall hear and decide an appeal taken by a party enjoined under this subchapter. If an appeal is not taken by a party temporarily enjoined under this article, the parties are [party is] entitled to a full trial on the merits not later than the 90th day after the date of the temporary injunctive order.

SECTION 4. Sections 125.004(a) and (b), Civil Practice and Remedies Code, are amended to read as follows:

(a) Proof that an activity described by Section 125.0015 [~~125.001~~] is frequently committed at the place involved or that the place is frequently used for an activity described by Section 125.0015 [~~125.001~~] is prima facie evidence that the defendant [~~proprietor~~] knowingly permitted the activity.

(b) Evidence that persons have been arrested for or convicted of offenses for an activity described by Sections 125.0015(1)-(7) or convicted of offenses for an activity described by Section 125.0015(8) [~~Section 125.001~~] in the place involved is admissible to show knowledge on the part of the defendant that the act occurred. The originals or certified copies of the papers and judgments of those arrests or convictions are admissible in the suit for injunction, and oral evidence is admissible to show that the offense for which a person was arrested or convicted was committed at the place involved.

SECTION 5. Section 125.042(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) The voters of an election precinct in which a common [~~public~~] nuisance is alleged to exist or is alleged to be likely to be created, or the voters in an adjacent election precinct, may request the district attorney, city attorney, or county attorney having geographical jurisdiction of the place that is the subject of the voters' complaints to authorize a meeting at which interested persons may state their complaints about the matter. To be valid to begin proceedings under this section, the written request must be signed by at least:

- (1) 10 percent of the registered voters of the election precinct in which the common [~~public~~] nuisance is alleged to exist or is alleged to be likely to be created; or
- (2) 20 percent of the voters of the adjacent election precinct.

SECTION 6. Sections 125.044 and 125.045, Civil Practice and Remedies Code, are amended to read as follows:

Sec. 125.044. FINDINGS. (a) After the meeting, the person appointed to conduct the meeting shall report the findings to the district attorney, city attorney, or county attorney who appointed the person. The district attorney, city attorney, or county attorney, on finding by the attorney that a common [~~public~~] nuisance exists or is likely to be created, may initiate appropriate available proceedings against the persons owning or operating the place at which the common [~~public~~] nuisance exists or is likely to be created.

(b) In a proceeding begun under Subsection (a):

(1) proof that acts creating a common [~~public~~] nuisance are frequently committed at the place is prima facie evidence that the owner and the operator knowingly permitted the acts; and

(2) evidence that persons have been arrested for or convicted of offenses involving acts at the place that create a common [~~public~~] nuisance is admissible to show knowledge on the part of the owner and the operator that the acts occurred.

(c) The originals or certified copies of the papers and judgments of the arrests or convictions described by Subdivision (2) of Subsection (b) are admissible in a suit for an injunction, and oral evidence is admissible to show that the offense for which a person was arrested or convicted was committed at the place involved.

Sec. 125.045. REMEDIES. (a) If, after notice and hearing on a request by a petitioner for a temporary injunction [~~in any judicial proceeding~~], a court determines that the petitioner is likely to succeed on the merits in a suit brought under Section 125.002 [~~a person has maintained a place at which a public nuisance existed~~], the court shall require that the defendant [~~person to~~] execute a bond. The bond must:

(1) be payable to the state at the county seat of the county in which the nuisance existed;

(2) be in the amount set by the court, but not less than \$5,000 or more than \$10,000;

(3) have sufficient sureties approved by the court; and

(4) be conditioned that the defendant [~~person~~] will not knowingly maintain [~~allow~~] a common [~~public~~] nuisance to exist at the place.

(b) If any party to a court case fails to cease and desist creating and maintaining a common [~~public~~] nuisance within the time allowed by the court, a political subdivision may:

(1) discontinue the furnishing of utility services by the political subdivision to the place at which the nuisance exists;

(2) prohibit the furnishing of utility service to the place by any public utility holding a franchise to use the streets and alleys of the political subdivision;

(3) revoke the certificate of occupancy of the place;

(4) prohibit the use of city streets, alleys, and other public ways for access to the place during the existence of the nuisance or in furtherance of the nuisance; and

(5) use any other legal remedy available under the laws of the state.

(c) If a condition of a bond filed or an injunctive order entered under this subchapter is violated, the district, county, or city attorney of the county in which the property is located or the attorney general may sue on the bond in the name of the state. In the event the attorney general originates the suit, the whole sum shall be forfeited as a penalty to the state. In the event the suit is originated by any office other than the attorney general, the whole sum shall be forfeited as a penalty to the originating entity.

SECTION 7. Section 125.046(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) If, in any judicial proceeding under Subchapter A [~~or B~~], a court determines that a person is maintaining a multiunit residential property that is a common nuisance [~~or a multiunit residential property at which a public nuisance exists~~], the court may, on its own motion or on the motion of any party, order the appointment of a receiver to manage the property or render any other order allowed by law as necessary to abate the nuisance.

SECTION 8. Subchapter C, Chapter 125, Civil Practice and Remedies Code, is amended by adding Section 125.047 to read as follows:

Sec. 125.047. NUISANCE ABATEMENT FUND. (a) In this section:

(1) "Fund" means a nuisance abatement fund.

(2) "Nuisance abatement" means an activity taken by a municipality to reduce the occurrences of a common or public nuisance.

(b) This section applies only to a municipality with a population of 1.5 million or more.

(c) A municipality shall create a fund as a separate account in the treasury of the municipality.

(d) The fund consists of:

(1) money awarded the municipality in an action under this chapter;

(2) money awarded the municipality under a settlement to an action under this chapter;

(3) fines resulting from code enforcement citations issued by the municipality for conduct defined as a common or public nuisance under this chapter;

(4) bonds forfeited to the municipality under this chapter; and

(5) donations or grants made to the municipality for the purpose of nuisance abatement.

(e) The money in the fund may be used only for the purpose of ongoing nuisance abatement. That purpose includes:

(1) regular and overtime compensation for nuisance abatement or enforcement personnel; and

(2) hiring additional personnel for nuisance abatement as needed.

SECTION 9. Sections 125.061-125.063, Civil Practice and Remedies Code, are amended to read as follows:

Sec. 125.061. DEFINITIONS. In this subchapter:

(1) "Combination" [~~,"combination"~~] and "criminal street gang" have the meanings assigned by Section 71.01, Penal Code.

(2) "Continuously or regularly" means at least five times in a period of not more than six months.

(3) "Gang activity" means the following types of conduct:

(A) organized criminal activity as described by Section 71.02, Penal Code;

(B) terroristic threat as described by Section 22.07, Penal Code;

(C) coercing, soliciting, or inducing gang membership as described by Section 22.015, Penal Code;

(D) criminal trespass as described by Section 30.05, Penal Code;

(E) disorderly conduct as described by Section 42.01, Penal Code;

(F) criminal mischief as described by Section 28.03, Penal Code, that causes a pecuniary loss of \$500 or more;

(G) a graffiti offense in violation of Section 28.08, Penal Code, that:

(i) causes a pecuniary loss of \$500 or more; or

(ii) occurs at a school, an institution of higher education, a place of worship or human cemetery, a public monument, or a community center that provides medical, social, or educational programs;

(H) a weapons offense in violation of Chapter 46, Penal Code; or

(I) unlawful possession of a substance or other item in violation of Chapter 481, Health and Safety Code.

Sec. 125.062. PUBLIC NUISANCE; COMBINATION. A combination or criminal street gang that continuously or regularly associates in gang [~~organized criminal~~] activities [~~as described by Section 71.02, Penal Code,~~] is a public nuisance.

Sec. 125.063. PUBLIC NUISANCE; USE OF PLACE. The habitual use of a place by a combination or criminal street gang for engaging in gang [~~organized criminal~~] activity [~~as described by Section 71.02, Penal Code,~~] is a public nuisance.

SECTION 10. Section 125.064(b), Civil Practice and Remedies Code, is amended to read as follows:

(b) Any person who habitually associates with others to engage in gang [~~organized criminal~~] activity as a member of a combination or criminal street gang may be made a defendant in the suit. Any person who owns or is responsible for maintaining a place that is habitually used for engaging in gang [~~organized criminal~~] activity [~~as described by Section 71.02, Penal Code,~~] may be made a defendant in the suit.

SECTION 11. Section 125.065, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 125.065. COURT ORDER. (a) If the court finds that a combination or criminal street gang constitutes a public nuisance, the court may enter an order:

(1) enjoining a defendant in the suit from engaging in the gang [~~organized criminal~~] activities of the combination or gang; and

(2) imposing other reasonable requirements to prevent the combination or gang from engaging in future gang activities.

(b) If the court finds that a place is habitually used in a manner that constitutes a public nuisance, the court may include in its order reasonable requirements to prevent the use of the place for gang [~~organized criminal~~] activity.

SECTION 12. Subchapter D, Chapter 125, Civil Practice and Remedies Code, is amended by adding Section 125.0675 to read as follows:

Sec. 125.0675. INJUNCTION FOR SPECIFIED PERIOD. In addition to any other order that may be issued under this subchapter or other law, a court of appeals or a trial court acting under Section 125.067(b) or (c) may issue an injunctive order under this subchapter stating that the injunction remains in effect during the course of the trial or until lifted by the court.

SECTION 13. Section 125.069, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 125.069. USE OF PLACE; EVIDENCE. In an action brought under this subchapter, proof that gang [~~organized criminal~~] activity by a member of a combination or a criminal street gang [~~as described by Section 71.02, Penal Code,~~] is frequently committed at a place or proof that a place is frequently used for engaging in gang [~~organized criminal~~] activity by a member of a combination or a criminal street gang [~~as described by Section 71.02, Penal Code,~~] is prima facie evidence that the proprietor knowingly permitted the act, unless[;] the act constitutes conspiring to commit gang activity [~~an offense as described by Section 71.02~~].

SECTION 14. Subchapter B, Chapter 125, Civil Practice and Remedies Code, and Section 125.041, Civil Practice and Remedies Code, are repealed.

SECTION 15. This Act takes effect September 1, 2003, and applies only to a cause of action that accrues on or after that date. An action that accrued before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose.



**Floor Amendment No. 1**

Amend **CSSB 1010**, SECTION 2, Subsection (g) as follows:

On page 5, line 6, strike subsection (g) and substitute the following:

"(g) In an action brought under this chapter the petitioner may file a notice of lis pendens and certified copy of an order of the court in the office of the county clerk of each county in which the land is located. The notice of lis pendens shall conform to the requirements of Section 12.007, Property Code, and shall constitute notice as provided in Section 13.004, Property Code. A certified copy of an order of the court filed in the office of the county clerk shall constitute notice of the terms thereof and shall be binding on subsequent purchasers and lienholders."

**Floor Amendment No. 2**

Amend **CSSB 1010** in SECTION 1 of the bill, in amended Section 125.0015(a), Civil Practice and Remedies Code (page 2, line 16-20), by striking Subdivisions (7) and (8) and substituting the following:

(7) compelling prostitution as prohibited by the Penal Code;

(8) commercial manufacture, commercial distribution, or commercial exhibition of obscene material as prohibited by the Penal Code;

(9) public lewdness or indecent exposure in violation of the Penal Code; or

(10) obscene activity in violation of Section 43.24, 43.25, 43.251, or 43.26,

Penal Code.

**Floor Amendment No. 3**

Amend **CSSB 1010** as follows:

(1) In SECTION 1 of the bill, in amended Section 125.001, Civil Practice and Remedies Code (page 1, between lines 18 and 19), insert a new Subdivision (4) to read as follows:

(4) "Prohibited licensed premises activity" means any activity that:

(A) occurs in a private room in a premises:

(i) licensed for the sale of alcoholic beverages and designated under Section 11.49, Alcoholic Beverage Code; or

(ii) licensed as a sexually oriented business pursuant to Section 243.007, Local Government Code; and

(B) involves:

(i) any exposure of a person's anus or any part of a person's genitals with intent to arouse or gratify the sexual desire of any person;

(ii) any sexual intercourse, deviate sexual intercourse, sexual contact, or sexual conduct as those terms are defined by Section 43.01, Penal Code; or

(iii) any obscene performance as defined by Section 43.21, Penal Code.

(2) In SECTION 1 of the bill, in amended Section 125.0015(a), Civil Practice and Remedies Code (page 2, between lines 15 and 16), add a new Subdivision (7) and renumber appropriately:

(7) prohibited licensed premises activities;

### Floor Amendment No. 1 on Third Reading

Amend **CSSB 1010** on third reading in SECTION 1 of the bill, by striking Sections 125.001(4)(B)(i) and (ii), Civil Practice and Remedies Code, as added by Amendment No. \_\_\_\_ by Hartnett, and substituting the following:

- (i) any conduct described by Section 43.25(a)(2), Penal Code;
- (ii) any conduct described by Section 43.01, Penal Code; or

### Floor Amendment No. 2 on Third Reading

Amend **CSSB 1010** on third reading in Section 1 of the bill, in added Section 125.0015(a)(5), Civil Practice and Remedies Code, strike the text between "information" and the semicolon.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1010** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators West, Chair; Harris, Armbrister, Lindsay, and Duncan.

### SENATE BILL 827 WITH HOUSE AMENDMENT

Senator Whitmire called **SB 827** from the President's table for consideration of the House amendment to the bill.

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

### Amendment

Amend **SB 827** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to creating offenses for abandoning or endangering an elderly individual or disabled individual and for failing to provide certain care for a child, elderly individual, or disabled individual.

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

SECTION 1. Section 22.041, Penal Code, is amended to read as follows:

Sec. 22.041. ABANDONING OR ENDANGERING A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (a) In this section:

(1) "Abandon"[-,"abandon"] means to leave a child, elderly individual, or disabled individual in any place without providing reasonable and necessary care for the child, elderly individual, or disabled individual under circumstances under which no reasonable, similarly situated adult would leave an individual or [a] child of that age and ability.

(2) "Elderly individual" and "disabled individual" have the meanings assigned by Section 22.04(c).

(b) A person commits an offense if, having custody, care, or control of a child younger than 15 years, an elderly individual, or a disabled individual, the person [he] intentionally abandons the child, elderly individual, or disabled individual in any place under circumstances that expose the child, elderly individual, or disabled individual to an unreasonable risk of harm.

(c) A person commits an offense if the person [he] intentionally, knowingly, or recklessly~~[-, or with criminal negligence]~~, by act or omission, engages in conduct that places a child younger than 15 years, an elderly individual, or a disabled individual in imminent danger of death, bodily injury, or physical or mental impairment.

(c-1) A person commits an offense if, having custody, care, or control of a child younger than 15 years, an elderly individual, or a disabled individual, the person intentionally or knowingly fails to provide food, medical care, or shelter for the child, elderly individual, or disabled individual.

(d) Except as provided by Subsection (e), an offense under Subsection (b) is:

(1) a state jail felony if the actor abandoned the child, elderly individual, or disabled individual with intent to return for the child, elderly individual, or disabled individual; or

(2) a felony of the third degree if the actor abandoned the child, elderly individual, or disabled individual without intent to return for the child, elderly individual, or disabled individual.

(e) An offense under Subsection (b) is a felony of the second degree if the actor abandons the child, elderly individual, or disabled individual under circumstances that a reasonable person would believe would place the child, elderly individual, or disabled individual in imminent danger of death, bodily injury, or physical or mental impairment.

(f) An offense under Subsection (c) is a state jail felony.

(f-1) An offense under Subsection (c-1) is a felony of the second degree.

(g) It is a defense to prosecution under Subsection (c) that the act or omission enables the child to practice for or participate in an organized athletic event and that appropriate safety equipment and procedures are employed in the event.

(h) It is an exception to the application of Subsection (b) [this section] that the actor voluntarily delivered the child to a designated emergency infant care provider under Section 262.302, Family Code.

(i) It is a defense to prosecution under Subsection (c) or (c-1) that the actor voluntarily delivered the child to a designated emergency infant care provider under Section 262.302, Family Code.

(j) It is a defense to prosecution under Subsection (c-1) that the person is a health care facility licensed under a law other than Chapter 241, Health and Safety Code, or a licensed health care professional providing medical treatment at, or is an employee of, a health care facility licensed under a law other than Chapter 241, Health and Safety Code, and that the person's conduct is the result of:

(1) a decision made under Subchapter B, Chapter 166, Health and Safety Code, to withhold or withdraw life-sustaining treatment from a qualified terminal or irreversible patient;

(2) a power of attorney executed in compliance with Subchapter D, Chapter 166, Health and Safety Code, or under Chapter XII, Probate Code;

(3) consent to medical treatment of a minor in compliance with Chapter 32, Family Code;

(4) consent for emergency care received in compliance with Chapter 773, Health and Safety Code;

(5) a hospital patient transfer made in compliance with Subchapter B, Chapter 241, Health and Safety Code;

(6) a decision made by a patient's legal guardian who has the authority to make a decision regarding the patient's medical treatment;

(7) a reasonable decision consistent with:

(A) a physician's orders, care, treatment, or individual service plan with respect to the child, elderly individual, or disabled individual;

(B) the diagnosis or medical condition of the child, elderly individual, or disabled individual;

(C) the scope and nature of a health care provider's license or certification; or

(D) an individual contract for services with the health care provider, entered into by the child, elderly individual, disabled individual, or a legal guardian with authority to make health care decisions for the child, elderly individual, or disabled individual; or

(8) a decision to discharge a child, elderly individual, or disabled individual from a health care facility licensed under a law other than Chapter 241, Health and Safety Code, based on the child's, elderly individual's, or disabled individual's inability to pay for care or treatment provided by the health care facility.

SECTION 2. (a) This Act takes effect September 1, 2003.

(b) The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For the purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 827** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Whitmire, Chair; Wentworth, Williams, Gallegos, and Nelson.

**SENATE BILL 693 WITH HOUSE AMENDMENT**

Senator Gallegos called **SB 693** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 693** on third reading as follows:

(1) Page 5, line 9, strike "worker's compensation insurance and"

The amendment was read.

Senator Gallegos moved to concur in the House amendment to **SB 693**.

The motion prevailed by a viva voce vote.

**SENATE RESOLUTION 918**

Senator Brimer offered the following resolution:

**SR 918**, In memory of Jason Eric Bentley of Hurst.

BRIMER  
NELSON

The resolution was read.

Senator Brimer was recognized and introduced to the Senate family members of Jason Eric Bentley: his parents, William and Gail Bentley; his daughter, Sarah; and his brother, Bill.

The Senate welcomed its guests and extended its sympathy.

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

In honor of the memory of Jason Eric Bentley of Hurst, the text of **SR 918** is printed at the end of today's *Senate Journal*.

**SENATE BILL 165 WITH HOUSE AMENDMENT**

Senator Carona called **SB 165** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 165** as follows:

(1) On page 1, line 7, strike "AUTHORITY TO REMOVE" and substitute "REMOVAL OF".

(2) On page 1, between lines 8 and 9, insert:

(1) "Authority" means:

(A) a metropolitan rapid transit authority operating under Chapter 451;

or

(B) a regional transportation authority operating under Chapter 452.

(3) On page 1, line 9, strike "(1)" and substitute "(2)".

(4) On page 1, line 14, strike "(2)" and substitute "(3)".

(5) On page 1, line 21, strike "A" and substitute "An authority or a".

(6) On page 1, line 22, between "if the" and "agency", insert "authority or law enforcement".

(7) On page 2, line 3, between "reimburse the" and "law enforcement agency", insert "authority or".

(8) On page 2, line 5, between "provision of law," and "a law", insert "an authority or".

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 165**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### SENATE RESOLUTION 882

Senator Barrientos offered the following resolution:

**SR 882**, In memory of George Kozmetsky of Austin.

The resolution was again read.

Senator Barrientos was recognized and introduced to the Senate family members of George Kozmetsky: his widow, Ronya; his son, Greg; his daughter-in-law, Cindy; and his grandsons, Daniel Kozmetsky and Jordan Scott.

The Senate welcomed its guests and extended its sympathy.

The resolution was previously adopted on Thursday, May 15, 2003.

In honor of the memory of George Kozmetsky of Austin, the text of **SR 882** is printed at the end of today's *Senate Journal*.

### SENATE BILL 1726 WITH HOUSE AMENDMENTS

Senator Lindsay called **SB 1726** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer, Senator Lucio in Chair, laid the bill and the House amendments before the Senate.

#### Committee Amendment No. 1

Amend **SB 1726** as follows:

(1) In SECTION 4 of the bill (page 2, lines 22-23) strike "by a public utility as defined by Section 11.004, Utilities Code" and substitute "by an electric utility as defined by Section 31.002, Utilities Code, a gas utility as defined by Section 101.003 or 121.001, Utilities Code, a telecommunications provider as defined by Section 51.002, Utilities Code, or a cable operator as defined by 47 U.S.C. Section 522, and its subsequent amendments".

(2) In SECTION 24 of the bill (page 12, lines 19-21) strike Subsection (b) and substitute the following:

(b) The district may not impose an impact fee on property, including equipment or facilities, of an electric utility as defined by Section 31.002, Utilities Code, a gas utility as defined by Section 101.003 or 121.001, Utilities Code, a telecommunications provider as defined by Section 51.002, Utilities Code, or a cable operator as defined by 47 U.S.C. Section 522, and its subsequent amendments.

### **Committee Amendment No. 2**

Amend **SB 1726** as follows:

(1) On page 6, between lines 21 and 22, add a new SECTION 14 and renumber the remaining sections of the bill as appropriate:

SECTION 14. DISTRICT CONFIRMATION ELECTION. (a) As soon as practicable after all initial directors have qualified for office, the initial directors shall hold an organizational meeting and call a confirmation election to be held on the uniform election date occurring in November 2003.

(b) The confirmation election shall be called and held in the manner provided by Subchapter D, Chapter 49, Water Code. The costs of holding the election shall be paid by the county but if the district is confirmed, the district shall reimburse the county for the costs of the election.

(c) The initial directors shall adopt the wording of the ballot proposition which must clearly and completely explain:

(1) whether the district may:

(A) impose taxes or fees, including an explanation of the nature of those taxes or fees;

(B) exercise the power of eminent domain;

(C) issue bonds; and

(2) the powers and duties of the district.

(d) Before the district is confirmed at the election, the district may carry on any business as the board may determine except that the district may not borrow money or impose or assess a tax or an assessment.

(2) In SECTION 25 of the bill, on page 13, line 1, between "may" and "submit" insert "not".

(3) In SECTION 29 of the bill, on page 15, between lines 2 and 3, add new Subsections (c) and (d) to read as follows:

(c) The district may not enter into or renew a contract with a business entity in which a director of the board has a substantial interest, as defined by Section 171.002, Local Government Code.

(d) A director commits an offense if the director authorizes, or allows an employee of the district to authorize, entering or renewing a contract in violation of Subsection (c). An offense under this subsection is a Class A misdemeanor.

The amendments were read.

Senator Lindsay moved to concur in the House amendments to **SB 1726**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

## SENATE BILL 1887 WITH HOUSE AMENDMENT

Senator Janek called **SB 1887** from the President's table for consideration of the House amendment to the bill.

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

### Amendment

Amend **SB 1887** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the board of directors and the powers and duties of the Westchase Area Management District.

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

SECTION 1. Section 376.050, Local Government Code, is amended to read as follows:

Sec. 376.050. APPOINTMENT OF DIRECTORS; VACANCY. The mayor and members of the governing body of the municipality shall appoint directors from persons recommended by the board. A vacancy in the office of director because of the death, resignation, or removal of a director shall be filled by the remaining members of the board by appointing a qualified person for the unexpired term. The mayor and members of the governing body of the municipality shall consider for appointment ~~[appoint]~~ as directors ~~[for the positions indicated]~~ persons representing the following interests:

- (1) ~~[positions 1, 11, and 12 must represent]~~ owners of multifamily rental housing with a minimum of 200 rental units;
- (2) lessees ~~[position 2 must be a lessee]~~ of office space of at least 30,000 square feet of rentable area;
- (3) ~~[positions 9 and 10 must represent]~~ owners of office facilities with a minimum of 500 employees or taxable value in excess of \$10 million;
- (4) ~~[positions 8, 13, and 14 must represent]~~ owners of multitenant office buildings;
- (5) ~~[position 15 must represent]~~ owners of multitenant retail property or major retail tenants ~~[of 20,000 square feet or more]~~;
- (6) ~~[position 16 must represent]~~ owners of temporary lodging facilities with on-site food service;
- (7) ~~[position 17 must represent]~~ owners of undeveloped property with a contiguous area of 5 acres or more; and
- (8) ~~[positions 3, 4, 5, 6, and 7 must represent the district at large and]~~ any other person qualified to serve on the board as provided by Section 375.063 to represent the district at large ~~[may be appointed for those positions]~~.

SECTION 2. Subchapter B, Chapter 376, Local Government Code, is amended by adding Section 376.066 to read as follows:



Sec. 376.066. CONFERENCE AND CONVOCATION CENTERS. The district may finance, acquire, lease as a lessor or lessee, construct, improve, operate, or maintain conference and convocation centers and supporting facilities. The district may enter into a long-term operating agreement with any person for the center or facility.

SECTION 3. (a) The legislature validates and confirms all governmental acts and proceedings of the Westchase Area Management District and the district's board of directors that occurred before the effective date of this Act.

(b) This section does not apply to any matter that on the effective date of this Act:

(1) is involved in litigation, if the litigation ultimately results in the matter being held invalid by a final judgment of a court with jurisdiction; or

(2) has been held invalid by a court with jurisdiction.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

The amendment was read.

Senator Janek moved to concur in the House amendment to **SB 1887**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**(Senator Armbrister in Chair)**

### **CONCLUSION OF MORNING CALL**

The Presiding Officer at 11:47 a.m. announced the conclusion of morning call.

### **SENATE BILL 954 ON SECOND READING**

On motion of Senator Madla and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 954** at this time on its second reading:

**SB 954**, Relating to the authority of a county to charge a fee for a plat application.

The bill was read second time and was passed to engrossment by a viva voce vote.

### **SENATE BILL 954 ON THIRD READING**

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 954** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**SENATE BILL 1219 ON SECOND READING**

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1219** at this time on its second reading:

**SB 1219**, Relating to services provided to children with developmental delay.

The bill was read second time and was passed to engrossment by a viva voce vote.

**SENATE BILL 1219 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 **SB 1219** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1930 ON SECOND READING**

On motion of Senator Staples and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1930** at this time on its second reading:

**CSSB 1930**, Relating to the board of directors and the powers of the Lone Star Groundwater Conservation District; validating certain actions and proceedings of the district.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1930 ON THIRD READING**

Senator Staples moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1930** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 2096 ON SECOND READING**

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2096** at this time on its second reading:

**HB 2096**, Relating to creation of an offense for transporting a person in certain trailers and semitrailers.

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2096** by inserting a new Subsection (c) (committee printing, page 1, line 33) to read as follows:

"(c) An offense under the section is a Class B misdemeanor."

The floor amendment was read and was adopted without objection.

Senator Van de Putte offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **HB 2096** (Senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering existing SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Title 5, Penal Code, is amended by adding Chapter 20A to read as follows:

CHAPTER 20A. TRAFFICKING OF PERSONS

Sec. 20A.01. DEFINITIONS. In this chapter:

(1) "Forced labor or services" means labor or services that are performed or provided by another person and obtained through an actor's:

(A) threatening to cause bodily injury to another;

(B) restraining another in a manner described by Section 20.01(1); or

(C) withholding from another the person's:

(i) government records;

(ii) identifying information; or

(iii) personal property.

(2) "Traffic" means to transport another person or to entice, recruit, harbor, provide, or otherwise obtain another person for transport by deception, coercion, or force.

Sec. 20A.02. TRAFFICKING OF PERSONS. (a) A person commits an offense if the person knowingly traffics another person with the intent that the trafficked person engage in:

(1) forced labor or services; or

(2) conduct that constitutes an offense under Chapter 43.

(b) Except as otherwise provided by this subsection, an offense under this section is a felony of the second degree. An offense under this section is a felony of the first degree if:

(1) the offense is committed under Subsection (a)(2) and the person who is trafficked is younger than 14 years of age at the time of the offense; or

(2) the commission of the offense results in the death of the person who is trafficked.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

SECTION \_\_\_\_\_. Section 71.02(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, he commits or conspires to commit one or more of the following:

- (1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;
- (2) any gambling offense punishable as a Class A misdemeanor;
- (3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;
- (4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;
- (5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;
- (6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;
- (7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;
- (8) any felony offense under Chapter 32~~[, Penal Code]~~;
- (9) any offense under Chapter 36~~[, Penal Code]~~;
- (10) any offense under Chapter 34~~[, Penal Code]~~; ~~or~~
- (11) any offense under Section 37.11(a); or
- (12) any offense under Chapter 20A~~[, Penal Code]~~.

The floor amendment was read and was adopted without objection.

On motion of Senator Lucio and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 2096** as amended was passed to third reading by a viva voce vote.

#### **HOUSE BILL 2096 ON THIRD READING**

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2096** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

#### **SENATE BILL 728 ON SECOND READING**

On motion of Senator Staples and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 728** at this time on its second reading:

**SB 728**, Relating to the benefits provided to the survivors of certain public employees killed in the line of duty.

The bill was read second time and was passed to engrossment by a viva voce vote.

**SENATE BILL 728 ON THIRD READING**

Senator Staples moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 728** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**HOUSE BILL 261 ON SECOND READING**

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 261** at this time on its second reading:

**HB 261**, Relating to the eligibility of armed forces personnel and their family members to pay tuition and fees at the rate provided to Texas residents.

The bill was read second time.

Senator Fraser offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 261** (Senate committee printing) as follows:

(1) In SECTION 1 of the bill, in the introductory language, immediately before "adding Subsection (j)" (page 1, at the beginning of line 13), insert "amending Subsections (c), (f), and (g) and".

(2) In SECTION 1 of the bill, immediately before proposed Subsection (j), Section 54.058, Education Code (page 1, between lines 13 and 14), insert the following:

(c) The [As long as they reside continuously in Texas, the] spouse or child [and children] of a member of the Armed Forces of the United States who has been assigned to duty elsewhere immediately following assignment to duty in Texas is [are] entitled to pay the tuition fees and other fees or charges provided for Texas residents as long as the spouse or child resides continuously in Texas.

(f) The spouse or child [and children] of a member of the Armed Forces of the United States who dies or is killed is [are] entitled to pay the resident tuition fee if the spouse or child becomes a resident [wife and children become residents] of Texas within 60 days of the date of death.

(g) If a member of the Armed Forces of the United States is stationed outside Texas and the member's [his] spouse or child establishes [and children establish] residence in Texas by residing in Texas and by filing with the Texas institution of higher education at which the spouse or child plans [they plan] to register a letter of intent to establish residence in Texas, the institution of higher education shall permit the spouse or child [and children] to pay the tuition, fees, and other charges provided for Texas residents without regard to length of time that the spouse or child has [they have] resided in Texas [the state].

(3) In SECTION 2 of the bill, immediately before "Section 54.058(j)" (page 1, line 29), insert "(a)".

(4) At the end of SECTION 2 of the bill (page 1, between lines 37 and 38), insert the following:

"(b) The changes in law made by this Act to Subsections (c), (f), and (g), Section 54.058, Education Code, apply beginning with tuition charged for the 2003 fall semester."

The floor amendment was read and was adopted without objection.

On motion of Senator Fraser and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 261** as amended was passed to third reading by a viva voce vote.

#### **HOUSE BILL 261 ON THIRD READING**

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 261** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### **HOUSE BILL 462 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 462** at this time on its second reading:

**HB 462**, Relating to the collection of a fee from certain nonresident attorneys requesting permission to participate in proceedings in a Texas court.

The bill was read second time and was passed to third reading by a viva voce vote.

#### **HOUSE BILL 462 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 462** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

#### **COMMITTEE SUBSTITUTE**

#### **HOUSE BILL 2493 ON SECOND READING**

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2493** at this time on its second reading:

**CSHB 2493**, Relating to consideration of a bidder's principal place of business in awarding certain municipal and school district contracts.

The bill was read second time and was passed to third reading by a viva voce vote.

**RECORD OF VOTE**

Senator Lindsay asked to be recorded as voting "Nay" on the passage of **CSHB 2493** to third reading.

**HOUSE BILL 887 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 887** at this time on its second reading:

**HB 887**, Relating to the award of attorney's fees and expenses in a suit affecting the parent-child relationship.

The bill was read second time and was passed to third reading by a viva voce vote.

**HOUSE BILL 887 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 887** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE****HOUSE BILL 2493 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2493** be placed on its third reading and final passage:

**CSHB 2493**, Relating to consideration of a bidder's principal place of business in awarding certain municipal and school district contracts.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Lindsay.

The bill was read third time.

Senator Jackson offered the following amendment to the bill:

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

Amend **CSHB 2493** in SECTION 1 of the bill (committee printing page 1, lines 15-20) by striking amended Section 271.905(a), Local Government Code, and substituting the following:

(a) In this section, "local government" means a municipality with a population of 225,000 [~~200,000~~] or less, a county with a population of 400,000 or less, or another political subdivision authorized under this title to purchase real property or personal property that is not affixed to real property. [~~The term does not include a school district.~~]

The floor amendment was read and was adopted without objection.

On motion of Senator Duncan and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 2493** as amended was finally passed by a viva voce vote.

### **RECORD OF VOTE**

Senator Lindsay asked to be recorded as voting "Nay" on the final passage of **CSHB 2493**.

### **HOUSE BILL 2940 ON SECOND READING**

On motion of Senator Jackson and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2940** at this time on its second reading:

**HB 2940**, Relating to the funding of the administrative costs of the Texas Environmental Education Partnership Fund Board.

The bill was read second time and was passed to third reading by a viva voce vote.

### **HOUSE BILL 2940 ON THIRD READING**

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2940** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

### **SENATE BILL 1331 WITH HOUSE AMENDMENT**

Senator Ratliff called **SB 1331** from the President's table for consideration of the House amendment to the bill.

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

#### **Amendment No. 1**

**SB 1331** is amended by adding a new SECTION to read as follows, renumbering the existing SECTIONS as appropriate:

SECTION \_\_\_\_\_. Sec. 44.040, Education Code, is amended to read as follows:

Sec. 44.040. Selecting Contractor for Construction Services Through Competitive Bidding. (a) Except to the extent prohibited by other law and to the extent consistent with this subchapter, a school district may use competitive bidding to select a contractor to perform construction, rehabilitation, alteration, or repair services for a facility.

(b) Except as otherwise specifically provided by this subsection, Subchapter B, Chapter 271, Local Government Code, does not apply to a competitive bidding process under this subchapter. Sections 271.026, 271.027(a), and 271.0275, Local Government Code, apply to a competitive bidding process under this subchapter.



(c) The district shall select or designate an engineer or architect to prepare construction documents for the project. The selected or designated engineer or architect has full responsibility for complying with Chapter 1001 and Chapter 1051, Occupations Code, as applicable.

(d) A school district shall award a competitively bid contract at the bid amount to the bidder offering the best value to the district according to the selection criteria that were established by the district. The selection criteria may include the factors listed in Section 44.031(b).

The amendment was read.

Senator Ratliff moved to concur in the House amendment to **SB 1331**.

The motion prevailed by a viva voce vote.

### **SENATE BILL 1895 WITH HOUSE AMENDMENT**

Senator Ellis called **SB 1895** from the President's table for consideration of the House amendment to the bill.

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

#### **Committee Amendment No. 1**

Amend **SB 1895** in SECTION 1 of the bill (engrossed version page 1, line 8), by striking "1.9" and substituting "1".

The amendment was read.

Senator Ellis moved to concur in the House amendment to **SB 1895**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### **SENATE BILL 197 WITH HOUSE AMENDMENT**

Senator Staples called **SB 197** from the President's table for consideration of the House amendment to the bill.

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

#### **Amendment**

Amend **SB 197** by substituting in lieu thereof the following:

#### **A BILL TO BE ENTITLED AN ACT**

relating to the challenge of a voter's registration.

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

SECTION 1. Section 16.0921, Election Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsection (c), on [On] the filing of a sworn statement under Section 16.092 alleging a ground based on residence, the registrar shall promptly deliver to the voter whose registration is challenged a confirmation notice in accordance with Section 15.051.

(c) The registrar may not deliver a confirmation notice resulting from a sworn statement filed after the 75th day before the date of the general election for state and county officers until after the date of that election. This subsection does not apply to a person who registers after the 75th day and prior to the 30th day before the general election for state and county officers.

SECTION 2. This Act takes effect September 1, 2003, and applies only to an election ordered on or after that date.

The amendment was read.

Senator Staples moved to concur in the House amendment to **SB 197**.

The motion prevailed by a viva voce vote.

### **SENATE RESOLUTION 802**

Senator Williams offered the following resolution:

WHEREAS, On May 21, 2003, the Texas Senate is pleased to welcome the visiting delegation from the St. Anthony of Padua Senior Pals to the State Capitol; and

WHEREAS, The Senior Pals program was initiated in 2002 in an effort to unite members of the church who are over the age of 55; by bringing together a community of individuals who have similar interests and life experiences, the program offers participants a unique sense of belonging within the large St. Anthony of Padua parish; and

WHEREAS, In addition to regular meetings, members of Senior Pals are invited to take part in various monthly trips and social events, one of which is this month's visit to the senate chamber; and

WHEREAS, Participating in the democratic system of government is truly a worthwhile undertaking, and it is a pleasure to welcome the members of the Senior Pals program as they embrace this admirable goal; now, therefore, be it

RESOLVED, That the Senate of the 78th Texas Legislature hereby honor all those associated with the Senior Pals program at St. Anthony of Padua in The Woodlands and extend to them sincere best wishes for a memorable visit to Austin.

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

### **GUESTS PRESENTED**

Senator Williams was recognized and introduced to the Senate a delegation from the Senior Pals program at Saint Anthony of Padua in The Woodlands.

The Senate welcomed its guests.

### **HOUSE BILL 1536 ON SECOND READING**

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1536** at this time on its second reading:

**HB 1536**, Relating to certain communication with and access to a child following termination of the parent-child relationship.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1536** (Senate committee printing) in SECTION 1 of the bill, in proposed Section 161.2061(a), Family Code (page 1, lines 29 and 30), by striking "or a licensed child-placing agency, as defined by Section 101.017".

The floor amendment was read and was adopted without objection.

On motion of Senator Shapiro and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 1536** as amended was passed to third reading by a viva voce vote.

**HOUSE BILL 1536 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1536** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**HOUSE BILL 1701 ON SECOND READING**

On motion of Senator Jackson and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1701** at this time on its second reading:

**HB 1701**, Relating to providing a uniform limit on the population of a county election precinct.

The bill was read second time and was passed to third reading by a viva voce vote.

**HOUSE BILL 1701 ON THIRD READING**

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1701** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE**

**HOUSE BILL 157 ON SECOND READING**

On motion of Senator Ogden and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 157** at this time on its second reading:

**CSHB 157**, Relating to the powers and duties of a regional mobility authority.

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 157** as follows:

(1) In SECTION 1 of the bill, in added Section 361.003(m), Transportation Code (committee printing, page 1, line 18), between "project" and the period, insert the following:

" , including the power to:

(1) issue turnpike revenue bonds in connection with the turnpike project;

(2) impose a toll for the use of the turnpike project; or

(3) obtain from any other source the revenue necessary to pay all or part of the principal of and interest on the turnpike revenue bonds".

(2) In SECTION 1 of the bill, in amended Section 361.003, Transportation Code (committee printing, page 1, between lines 18 and 19), insert a new Subsection (n) to read as follows:

(n) For purposes of Subsection (m), a reference in Subchapter E to the commission means the board of directors of a regional mobility authority.

(3) In SECTION 1 of the bill, in amended Section 361.003, Transportation Code (committee printing, page 1, line 19), reletter existing Subsection (n) as Subsection (o).

(4) In SECTION 1 of the bill, in added Section 361.003(n)(1), Transportation Code (committee printing, page 1, line 22), strike "project under Subchapter O, Chapter 451, or Chapter 452 or 453," and substitute "project under Chapter 451, 452, or 453.".

The floor amendment was read and was adopted without objection.

On motion of Senator Ogden and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 157** as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 157 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 157** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 292 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 292** at this time on its second reading:

**HB 292**, Relating to the taking of a specimen of a person's breath or blood in connection with certain alcohol-related offenses.

The bill was read second time and was passed to third reading by a viva voce vote.

**HOUSE BILL 292 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 292** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**RECORD OF VOTE**

Senator Estes asked to be recorded as voting "Nay" on the final passage of **HB 292**.

**HOUSE CONCURRENT RESOLUTION 82  
ON SECOND READING**

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration **HCR 82** at this time on its second reading:

**HCR 82**, Memorializing Congress to increase Texas' share of revenue from the federal fuel tax to 95 percent.

The resolution was read second time.

Senator Barrientos offered the following committee amendment to the resolution:

**Committee Amendment No. 1**

Amend **HCR 82**, as follows:

- (1) On page 1, line 19, before "donor" insert "highway program".
- (2) On page 1, line 20, between "into" and "the" insert "the highway account of".
- (3) On page 1, line 21, between "average" and "rate" insert "highway program".
- (4) On page 2, line 1, between "percent" and the semicolon, insert "on federal highway programs".
- (5) On page 2, line 12, between "the" and "rate" insert "state's highway program".

The committee amendment was read and was adopted without objection.

**HCR 82** as amended was adopted by a viva voce vote.

**HOUSE BILL 1460 ON SECOND READING**

On motion of Senator Jackson and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1460** at this time on its second reading:

**HB 1460**, Relating to the appraisal of real property for ad valorem tax purposes.

The bill was read second time and was passed to third reading by a viva voce vote.

**HOUSE BILL 845 ON SECOND READING**

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 845** at this time on its second reading:

**HB 845**, Relating to a purchasing preference for Texas vendors.

The bill was read second time.

Senator Carona offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 845** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS appropriately:

SECTION \_\_\_\_\_. Section 2155.445, Government Code, is amended by adding Subsection (d) to read as follows:

(d) In addition to the products covered by the definition adopted by rule under this section, in this section "recycled product" includes recycled steel products. The preference for recycled steel products under this section applies also to products purchased in connection with projects described by Section 2166.003.

The floor amendment was read and was adopted without objection.

On motion of Senator Carona and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 845** as amended was passed to third reading by a viva voce vote.

**HOUSE BILL 845 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 845** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**GUESTS PRESENTED**

Senator Barrientos was recognized and introduced to the Senate students from Burnet Middle School in Burnet, accompanied by their principal.

The Senate welcomed its guests.

### PHYSICIAN OF THE DAY

Senator Ogden was recognized and presented Dr. Daniel Voss of Georgetown as the Physician of the Day.

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

### SENATE BILL 146 WITH HOUSE AMENDMENT

Senator Estes called **SB 146** from the President's table for consideration of the House amendment to the bill.

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

#### Floor Amendment No. 1

Amend **SB 146** (House committee printing) by adding the following appropriately numbered SECTIONS to the bill and by renumbering existing SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 19, Article 42.12, Code of Criminal Procedure, is amended by amending Subsection (g) and adding Subsection (h) to read as follows:

(g) If the judge places on community supervision a person required to register as a sex offender under Chapter 62, the judge shall require as a condition of community supervision that the person pay to the person's supervising officer an amount equal to [a fee that equals] the [actual] cost, as evidenced by written receipt, incurred by [to] the applicable local law enforcement authority for providing notice for publication to a newspaper as required by Chapter 62. A political subdivision served by the local law enforcement authority may bill any unpaid amount, identified separately, within a bill for a utility service provided by the political subdivision to the person and may suspend service of the utility to a person who is delinquent in payment of the amount until the delinquent claim is fully paid to the political subdivision. A community supervision and corrections department or political subdivision, as applicable, shall remit an amount [fees] collected under this subsection to the applicable local law enforcement authority [to reimburse the authority for the actual cost incurred by the authority, as evidenced by written receipt, for providing notice for publication to a newspaper as required by Chapter 62]. In this subsection, "utility service" means water, wastewater, sewer, gas, garbage, electricity, or drainage service.

(h) In a community supervision revocation hearing at which it is alleged only that the person violated the terms of community supervision by failing to make a payment under Subsection (g) [this subsection], the inability of the person to pay as ordered by the judge is an affirmative defense to revocation, which the person must prove by a preponderance of the evidence.

SECTION \_\_\_\_\_. Section 2(b), Article 42.22, Code of Criminal Procedure, is amended to read as follows:

(b) The state also has a restitution lien to secure the:

(1) amount of fines or costs entered against a defendant in the judgment in a felony criminal case;

(2) amount of reimbursement for costs of:

- (A) confinement ordered under Article 42.038; or  
(B) notice provided under Article 62.03 or 62.04; and

(3) amount of damages incurred by the state as a result of the commission of an offense under Section 38.04, Penal Code, in which the defendant used a motor vehicle while the defendant was in flight.

SECTION \_\_\_\_\_. Chapter 62, Code of Criminal Procedure, is amended by adding Article 62.041 to read as follows:

Art. 62.041. AUTHORITY OF POLITICAL SUBDIVISION TO COLLECT COSTS OF CERTAIN NOTICE. (a) In this article, "utility service" means water, wastewater, sewer, gas, garbage, electricity, or drainage service.

(b) A political subdivision served by a local law enforcement authority obtaining publication of notice under Article 62.03 or 62.04 may bill any unpaid amount under that article, identified separately, within a bill for a utility service provided by the political subdivision to the person who is the subject of the notice, and may suspend service of the utility to a person who is delinquent in payment of the amount until the delinquent claim is fully paid to the political subdivision.

(c) The political subdivision shall remit an amount collected under this article to the local law enforcement authority.

SECTION \_\_\_\_\_. Section 508.186, Government Code, is amended by adding Subsection (a-1) and amending Subsection (b) to read as follows:

(a-1) A political subdivision served by the local law enforcement authority may bill any unpaid amount under Subsection (a)(2), identified separately, within a bill for a utility service provided by the political subdivision to the releasee and may suspend service of the utility to a releasee who is delinquent in payment of the amount until the delinquent claim is fully paid to the political subdivision. In this subsection, "utility service" means water, wastewater, sewer, gas, garbage, electricity, or drainage service.

(b) The division or political subdivision, as applicable, shall remit an amount collected under this section to the applicable local law enforcement authority.

The amendment was read.

Senator Estes moved to concur in the House amendment to **SB 146**.

The motion prevailed by a viva voce vote.

**(Senator Janek in Chair)**

### **SENATE BILL 1265 WITH HOUSE AMENDMENTS**

Senator Armbrister called **SB 1265** from the President's table for consideration of the House amendments to the bill.

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

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

Amend **SB 1265** on page 1, line 22, between "violation" and "of this code", by inserting "by a person holding a permit issued by the commission or an employee of that person".



**Floor Amendment No. 6**

Amend **SB 1265** as follows:

(1) In added Section 7.203(c), Water Code, on page 2, line 7, strike "60th day" and substitute "45th day".

(2) In added Section 7.203(c), Water Code, on page 2, at the end of line 13, add "If the commission does not make a determination within the 45-day period required by this subsection:

(1) the peace officer may refer the matter to the appropriate prosecuting attorney for criminal prosecution; and

(2) notwithstanding Subsection (e), the commission or the state is not entitled to receive any part of an amount recovered through a prosecution brought by that prosecuting attorney.

**Floor Amendment No. 10**

Amend **SB 1265**, in added Section 7.203(e), Water Code, as follows:

(1) On page 3, line 1, strike "80 percent" and substitute "70 percent".

(2) On page 3, line 3, strike "20 percent" and substitute "30 percent".

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

Amend **SB 1265** on third reading in SECTION 2 of the bill, in proposed Section 7.203(a), Water Code (committee printing page 1, line 15), between "permit" and the period, by inserting "and that is related to the activity for which the permit was issued".

**Floor Amendment No. 4 on Third Reading**

Amend **SB 1265** on third reading in SECTION 2 of the bill, in proposed Section 7.203(a), Water Code (committee printing page 1, line 19), by adding at the end of the section:

Nothing in this section limits the power of a peace officer to arrest a person for an alleged offense.

**Floor Amendment No. 5 on Third Reading**

Amend **SB 1265** on third reading by amending Floor Amendment No. 6 by Deshotel, adopted on second reading, by striking item No. 2 of the amendment and substituting:

(2) In added Section 7.203(c), Water Code, on page 2, at the end of line 13, add "If the commission does not make a determination within the 45-day period required by this subsection:

(1) the appropriate prosecuting attorney may bring an action for criminal prosecution; and

(2) notwithstanding Subsection (e), the commission or the state is not entitled to receive any part of an amount recovered through a prosecution brought by that prosecuting attorney.

**Floor Amendment No. 6 on Third Reading**

Amend **SB 1265** on third reading as follows:

On page 1, line 15, strike "It is an exception to the application of this section that the" and insert "This section does not apply to an".

On page 1, line 17, in between the words "violation" and "clearly" insert "that".

On page 2, line 5 after the word "violation." insert "This section does not prohibit a peace officer from issuing a citation or making an arrest."

On page 2, line 19 in between the words "criminal prosecution" and "." insert "and the prosecuting attorney may proceed with the criminal prosecution of the alleged violation."

On page 2, line 23 in between the words "authorities" and "." insert "and the reasons why administrative or civil are adequate or appropriate. A prosecuting attorney may not prosecute an alleged violation if the commission determines that administrative or civil remedies are adequate and appropriate."

The amendments were read.

Senator Armbrister moved to concur in the House amendments to **SB 1265**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### **SENATE BILL 285 WITH HOUSE AMENDMENT**

Senator Nelson called **SB 285** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 285** on third reading by adding the following appropriately numbered section to the bill and renumbering subsequent sections accordingly:

SECTION \_\_\_\_ . Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.015 to read as follows:

Sec. 31.015. SERVICE REFERRALS FOR CERTAIN RECIPIENTS. To the extent practicable using existing revenue, the department, by rule, shall develop and implement a plan to:

(1) identify recipients of financial assistance that are at risk of exhausting their benefits under Section 31.0065; and

(2) provide referrals for the recipient and the recipient's family to appropriate preventive and support services, including faith-based services.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 285**.

The motion prevailed by a viva voce vote.

**(Senator Whitmire in Chair)**

### **COMMITTEE SUBSTITUTE HOUSE BILL 804 ON THIRD READING**

Senator Lindsay moved to suspend the regular order of business to take up for consideration **CSHB 804** at this time on its third reading and final passage:

**CSHB 804**, Relating to the minimum wage.

The motion prevailed by a viva voce vote.

The bill was read third time.

Senator Barrientos offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 804**, as follows:

In SECTION 3 of the bill, on page 1, line 60, in added Section 62.0515, Labor Code, insert a new Subsection (d) and re-letter the following Subsections accordingly:

(d) This section does not apply to a minimum wage established in a municipality that has a cost of living for all items on September 1, 2003 in excess of a national average as calculated by the United States Department of Labor, Bureau of Labor Statistics or a nationally recognized organization that has published a cost of living index on a quarterly basis for a minimum of 30 years prior to September 1, 2003.

The floor amendment was read and failed of adoption by a viva voce vote.

Senator Gallegos offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 804** as follows:

(1) In SECTION 3 of the bill, in added Section 62.0515, Labor Code, insert a new Subsection (d) (Senate committee printing, page 1, between lines 59 and 60) to read as follows:

(d) This section does not apply to a minimum wage established by a county with a population greater than 3.3 million.

(2) Number all other subsection according.

The floor amendment was read and failed of adoption by a viva voce vote.

Senator Gallegos offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **CSHB 804** as follows:

(1) In SECTION 3 of the bill, in added Section 62.0515, Labor Code, insert a new Subsection (d) (Senate committee printing, page 1, between lines 59 and 60) to read as follows:

(d) This section does not apply to a minimum wage established in a municipality with a population greater than 1.9 million.

(2) Number all other subsection according.

The floor amendment was read and failed of adoption by a viva voce vote.

**CSHB 804** was finally passed by the following vote: Yeas 20, Nays 9, Present-not voting 1.

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

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

Present-not voting: Whitmire.

Absent: Madla.

**(President in Chair)****BILLS AND RESOLUTIONS SIGNED**

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

**SB 57, SB 89, SB 249, SB 276, SB 433, SB 464, SB 532, SB 656, SB 934, SB 1380, SB 1507, SCR 23, HB 178, HB 211, HB 258, HB 276, HB 472, HB 543, HB 591, HB 608, HB 627, HB 671, HB 769, HB 776, HB 821, HB 839, HB 861, HB 873, HB 886, HB 889, HB 904, HB 940, HB 941, HB 1014, HB 1030, HB 1032, HB 1061, HB 1066, HB 1076, HB 1078, HB 1117, HB 1120, HB 1153, HB 1221, HB 1306, HB 1328, HB 1344, HB 1452, HB 1472, HB 1531, HB 1631, HB 1735, HB 1771, HB 1832, HB 1836, HB 1875, HB 1878, HB 2012, HB 2074, HB 2126, HB 2132, HB 2334, HB 2385, HB 2396, HB 2498, HB 2567, HB 2582, HB 2676, HB 2952, HB 3126, HB 3414, HB 3484, HB 3491, HB 3506, HB 3507, HB 3508, HCR 13, HCR 14, HCR 151, HCR 257, HJR 61.**

**HOUSE BILL 1460 ON THIRD READING**

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1460** be placed on its third reading and final passage:

**HB 1460**, Relating to the appraisal of real property for ad valorem tax purposes.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE****HOUSE BILL 15 ON THIRD READING**

Senator Williams moved to suspend the regular order of business to take up for consideration **CSHB 15** at this time on its third reading and final passage:

**CSHB 15**, Relating to regulation of abortion; creating an offense.

The motion prevailed by a viva voce vote.

**RECORD OF VOTES**

Senators Barrientos, Hinojosa, and Wentworth asked to be recorded as voting "Nay" on the suspension of the regular order of business.

The bill was read third time and was passed by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Averitt, Bivins, Brimer, Carona, Deuell, Duncan, Estes, Fraser, Harris, Jackson, Janek, Lucio, Madla, Nelson, Ogdan, Ratliff, Shapiro, Staples, Williams, Zaffirini.

Nays: Barrientos, Ellis, Gallegos, Hinojosa, Lindsay, Shapleigh, Van de Putte, Wentworth, West, Whitmire.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 9 ON SECOND READING**

Senator Shapiro moved to suspend the regular order of business to take up for consideration **CSHB 9** at this time on its second reading:

**CSHB 9**, Relating to homeland security.

The motion prevailed by a viva voce vote.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend Sec. 421.062 of **CSHB 9** by adding a new subsection (c) as follows:

(c) This section shall not be interpreted as a waiver of any immunity that might exist in the absence of an interlocal contract or a provision in an interlocal contract as set forth in paragraph (b) above.

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

Senator Hinojosa offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 9** in SECTION 3 of the bill by striking proposed Section 418.180, Government Code (committee printing page 5, line 67 through page 6, line 3), and substituting the following:

Sec. 418.180. CONFIDENTIALITY OF CERTAIN INFORMATION PREPARED FOR THE UNITED STATES. Information, other than financial information, in the possession of a governmental entity is confidential if the information:

- (a) is part of a report to an agency of the United States;
- (b) relates to an act of terrorism or related criminal activity; and
- (c) is specifically required to be kept confidential:

(1) under Section 552.101, Government Code, because of a federal statute or regulation;

(2) to participate in a state-federal information sharing agreement; or

(3) to obtain federal funding.

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

Senator Hinojosa offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **CSHB 9** in SECTION 5 of the bill, in amended Section 431.052(b), Government Code (Senate committee printing, page 7, lines 1-2), by striking "(1) be a [~~state~~] citizen of the United States and a resident of this state for at least 180 days" and substituting the following:

- (1) be a resident of this state for at least 180 days and:

(A) a [~~state~~] citizen of the United States; or

(B) a person who has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.)

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

Senator Shapleigh offered the following amendment to the bill:

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

Amend **CSHB 9** in SECTION 1 of the bill, after added Section 421.003, Government Code (Senate committee printing, page 2, line 13) by striking "(Sections 421.004-421.020 reserved for expansion)" and substituting the following:

Sec. 421.004. PROVISIONS GOVERNING MOBILE TRACKING DEVICES. In the event of a conflict between Section 14, Article 18.21, Code of Criminal Procedure, and this chapter or a rule adopted under this chapter, Section 14, Article 18.21, Code of Criminal Procedure, controls.

(Sections 421.005-421.020 reserved for expansion)

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

Senator Shapleigh offered the following amendment to the bill:

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

Amend **CSHB 9** in SECTION 3 of the bill by striking added Section 418.182, Government Code (Senate committee printing, page 6, lines 9 through 23), and substituting the following:

Sec. 418.182. CONFIDENTIALITY OF CERTAIN INFORMATION RELATING TO SECURITY SYSTEMS. (a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

(b) Financial information in the possession of a governmental entity that relates to the expenditure of funds by a governmental entity for a security system is public information that is not excepted from required disclosure under Chapter 552.

(c) Information in the possession of a governmental entity that relates to the location of a security camera in a private office at a state agency, including an institution of higher education, as defined by Section 61.003, Education Code, is public information and is not excepted from required disclosure under Chapter 552 unless the security camera:

(1) is located in an individual personal residence for which the state provides security; or

(2) is in use for surveillance in an active criminal investigation.

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

Senator Barrientos offered the following amendment to the bill:

**Floor Amendment No. 6**

Amend **CSHB 9** as follows:

(1) On page 6, line 11, strike "Subsections (b) and (c)" and substitute "Subsections (b), (c), and (d)".

(2) On page 6, between lines 23 and 24, insert new Subsection (d), to read as follows:

"(d) a description of procedures and training to prevent racial profiling, voyeurism, monitoring of individuals without reasonable suspicion, and personal use of information for non-security related purposes, is public information that is not excepted from disclosure under Chapter 552."

The floor amendment was read.

On motion of Senator Barrientos, Floor Amendment No. 6 was withdrawn.

Senator Van de Putte offered the following amendment to the bill:

**Floor Amendment No. 7**

Amend **CSHB 9** by adding the following sections and renumbering appropriately:

SECTION \_\_\_\_\_. Subsection (e), Section 81.042, Health and Safety Code, is amended to read as follows:

(e) The following persons shall report to the local health authority or the department a suspected case of a reportable disease and all information known concerning the person who has or is suspected of having the disease if a report is not made as required by Subsections (a)-(d):

- (1) a professional registered nurse;
- (2) an administrator or director of a public or private temporary or permanent child-care facility;
- (3) an administrator or director of a nursing home, personal care home, maternity home, adult respite care center, or adult day-care center;
- (4) an administrator of a home health agency;
- (5) an administrator or health official of a public or private institution of higher education;
- (6) an owner or manager of a restaurant, dairy, or other food handling or processing establishment or outlet;
- (7) a superintendent, manager, or health official of a public or private camp, home, or institution;
- (8) a parent, guardian, or householder;
- (9) a health professional; [✶]
- (10) an administrator or health official of a penal or correctional institution;

or

(11) emergency medical service personnel, a peace officer, or a firefighter.

SECTION \_\_\_\_\_. Subchapter B, Chapter 562, Occupations Code, is amended by adding Section 562.055 to read as follows:

Sec. 562.055. REPORT TO TEXAS DEPARTMENT OF HEALTH. A pharmacist shall report any unusual or increased prescription rates, unusual types of prescriptions, or unusual trends in pharmacy visits that may be caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or biological toxins that might pose a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability. Prescription-related events that require a report include:

(1) an unusual increase in the number of prescriptions to treat respiratory or gastrointestinal complaints or fever;

(2) an unusual increase in the number of prescriptions for antibiotics;

(3) an unusual increase in the number of requests for information on over-the-counter pharmaceuticals to treat respiratory or gastrointestinal complaints or fever; and

(4) any prescription that treats a disease that is relatively uncommon and has bioterrorism potential.

SECTION \_\_\_\_\_. Subsections (a), (b), and (c), Section 161.101, Agriculture Code, are amended to read as follows:

(a) A veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the following diseases among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease:

- (1) anthrax;
- (2) avian infectious laryngotracheitis;
- (3) avian influenza;
- (4) avian tuberculosis;
- (5) chronic wasting disease;
- (6) duck virus enteritis;
- (7) duck virus hepatitis;
- (8) equine encephalomyelitis;
- (9) equine infectious anemia;
- (10) infectious encephalomyelitis in poultry or other fowl;
- (11) ornithosis;
- (12) paramyxovirus infection in poultry or other fowl; or
- (13) scabies in sheep or cattle.

(b) In addition to reporting required by Subsection (a), the commission may adopt rules that require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report the existence of a disease other than bluetongue in an animal to the commission within 24 hours after diagnosis if the disease:

- (1) is recognized by the United States Department of Agriculture as a foreign animal disease;
- (2) is the subject of a cooperative eradication program with the United States Department of Agriculture;
- (3) is named on "List A" of the Office International Des Epizooties; or
- (4) is the subject of a state of emergency, as declared by the governor.



(c) The commission may adopt rules that require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report a disease not covered by Subsection (a) or (b) if the commission determines that action to be necessary for the protection of animal health in this state. The commission shall immediately deliver a copy of a rule adopted under this subsection to the appropriate legislative oversight committees. A rule adopted by the commission under this subsection expires on the first day after the last day of the first regular legislative session that begins after adoption of the rule unless the rule is continued in effect by act of the legislature.

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

On motion of Senator Shapiro and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 9** as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 9 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 9** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time.

On motion of Senator Shapiro, further consideration of **CSHB 9** was temporarily postponed.

Question — Shall **CSHB 9** be finally passed?

**COMMITTEE SUBSTITUTE  
HOUSE BILL 11 ON SECOND READING**

Senator Shapiro moved to suspend the regular order of business to take up for consideration **CSHB 11** at this time on its second reading:

**CSHB 11**, Relating to the offense of terroristic threat and to the punishment as a capital offense of murder occurring during the commission or attempted commission of terroristic threat.

The motion prevailed by a viva voce vote.

The bill was read second time.

Senator Shapleigh offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 11** (Senate committee printing) as follows:

(1) On page 2, lines 13-20, strike SECTION 3 of the bill and renumber subsequent SECTIONS accordingly.

(2) In SECTION 5 of the bill in amended Section 46.08(b), Penal Code (page 2, lines 43 and 44), strike "state jail felony [~~Class A misdemeanor~~]" and substitute "Class A misdemeanor".

The floor amendment was read.

On motion of Senator Shapleigh, Floor Amendment No. 1 was withdrawn.

On motion of Senator Shapiro, further consideration of **CSHB 11** was temporarily postponed.

Question — Shall **CSHB 11** be passed to third reading?

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

May 21, 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:

**SB 280**, Relating to the continuation and functions of the Texas Workforce Commission.

(Committee Substitute/Amended)

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

**SB 287**

House Conferees: Chisum - Chair/Cook, Byron/Marchant/Solomons/Villarreal/

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**COMMITTEE SUBSTITUTE  
HOUSE BILL 9 ON THIRD READING**

The President laid before the Senate **CSHB 9** on its third reading. The bill had been read third time and further consideration temporarily postponed:

**CSHB 9**, Relating to homeland security.

Question — Shall **CSHB 9** be finally passed?

**CSHB 9** was finally passed by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 510 ON THIRD READING**

Senator Ogden moved to suspend the regular order of business to take up for consideration **CSHB 510** at this time on its third reading and final passage:

**CSHB 510**, Relating to the issuance of special license plates for federal administrative law judges.

The motion prevailed by a viva voce vote.

**RECORD OF VOTES**

Senators Brimer and Wentworth asked to be recorded as voting "Nay" on the suspension of the regular order of business.

The bill was read third time.

Senator Ogden offered the following amendment to the bill:

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

Amend **CSHB 510** (committee report) on page 1, line 20, by striking "U.S. A.L. Judge" and substituting "F.A.L. Judge".

The floor amendment was read.

On motion of Senator Ogden, Floor Amendment No. 1 was withdrawn.

Senator Ogden offered the following amendment to the bill:

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

Amend **CSHB 510** (committee report) as follows:

1. On page 1, line 18, strike "or a retired federal administrative law judge".
2. On page 1, line 20, strike "U.S. A.L. Judge" and substitute "Fed. A.L. Judge".

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

**RECORD OF VOTES**

Senators Brimer and Wentworth asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 2.

On motion of Senator Ogden and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 510** as amended was finally passed by a viva voce vote.

**RECORD OF VOTES**

Senators Brimer and Wentworth asked to be recorded as voting "Nay" on the final passage of **CSHB 510**.

**COMMITTEE SUBSTITUTE****HOUSE BILL 11 ON SECOND READING**

The President laid before the Senate **CSHB 11** on its second reading. The bill had been read second time and further consideration temporarily postponed:

**CSHB 11**, Relating to the offense of terroristic threat and to the punishment as a capital offense of murder occurring during the commission or attempted commission of terroristic threat.

Question — Shall **CSHB 11** be passed to third reading?

Senator Shapleigh offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 11** (Senate committee printing) as follows:

(1) On page 2, line 20, between "degree" and "." insert ", unless the offense was committed by a person age 18 or under, in which case the offense is a Class A misdemeanor".

(2) On page 2, line 44, insert "unless the offense was committed by a person age 18 or under, in which case the offense is a Class A misdemeanor" before "."

The floor amendment was read.

On motion of Senator Shapleigh, Floor Amendment No. 2 was withdrawn.

Senator Shapleigh again offered the following amendment to the bill:

### **Floor Amendment No. 1**

Amend **CSHB 11** (Senate committee printing) as follows:

(1) On page 2, lines 13-20, strike SECTION 3 of the bill and renumber subsequent SECTIONS accordingly.

(2) In SECTION 5 of the bill in amended Section 46.08(b), Penal Code (page 2, lines 43 and 44), strike "state jail felony [~~Class A misdemeanor~~]" and substitute "Class A misdemeanor".

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

On motion of Senator Shapiro and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 11** as amended was passed to third reading by a viva voce vote.

### **COMMITTEE SUBSTITUTE HOUSE BILL 11 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 11** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

### **SENATE RULE 11.18(a) SUSPENDED (Public Hearings)**

On motion of Senator Ratliff and by unanimous consent, Senate Rule 11.18(a) was suspended in order that the Committee on State Affairs might consider the following bills tomorrow:

**HB 145, HB 999, HB 1602, HB 3096, HB 1797, HB 1798, HB 1799, HB 1800, HB 2095, HB 2198, HB 2562, HCR 90.**

### **SENATE RULE 11.18(a) SUSPENDED (Public Hearings)**

On motion of Senator Van de Putte and by unanimous consent, Senate Rule 11.18(a) was suspended in order that the Committee on Veteran Affairs and Military Installations might consider **HB 2540** today.

**SENATE RULE 11.18(a) SUSPENDED  
(Public Hearings)**

On motion of Senator Fraser and by unanimous consent, Senate Rule 11.18(a) was suspended in order that the Committee on Business and Commerce might consider the following bills tomorrow:

**HB 124, HB 650, HB 2005, HB 2180, HB 2579, HB 3139, HB 3308, HB 1008, HB 2156.**

**SENATE RULE 11.18(a) SUSPENDED  
(Public Hearings)**

On motion of Senator Nelson and by unanimous consent, Senate Rule 11.18(a) was suspended in order that the Committee on Health and Human Services might consider the following bills tomorrow: **HB 1350, HB 2721.**

**NOTICE GIVEN FOR  
LOCAL AND UNCONTESTED CALENDAR**

Senator Harris announced that a Local and Uncontested Calendar had been furnished to each Member of the Senate. He then gave notice that the Local and Uncontested Calendar Session would be held at 8:00 a.m. tomorrow and that all bills and resolutions would be considered on second and third reading in the order in which they were listed.

**SENATE RULES SUSPENDED  
(Posting Rules)**

On motion of Senator Madla and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Intergovernmental Relations might meet and consider the following bills tomorrow: **HB 678, HB 1934, HB 2801, HB 3223, HB 2844, HB 1767, HJR 4.**

**SENATE RULE 11.18(a) SUSPENDED  
(Public Hearings)**

On motion of Senator Barrientos and by unanimous consent, Senate Rule 11.18(a) was suspended in order that the Committee on Infrastructure Development and Security might consider **HB 3588** tomorrow.

**SENATE RULES SUSPENDED  
(Posting Rules)**

On motion of Senator Shapiro and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Education might meet and consider **HB 318** today.

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

On motion of Senator Whitmire and by unanimous consent, Senate Rule 11.13 was suspended to grant all committees permission to meet while the Senate is meeting tomorrow.

### MOTION TO ADJOURN

On motion of Senator Whitmire and by unanimous consent, the Senate at 3:22 p.m. agreed to adjourn, in memory of Jason Eric Bentley of Hurst and George Kozmetsky of Austin, upon conclusion of the Local and Uncontested Calendar Session, until 11:00 a.m. tomorrow.

### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1567

Senator Bivins submitted the following Conference Committee Report:

Austin, Texas  
May 19, 2003

Honorable David Dewhurst  
President of the Senate

Honorable Tom Craddick  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1567** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

BIVINS

WHITMIRE

STAPLES

ARMBRISTER

WEST

W. SMITH

CHISUM

KUEMPEL

BONNEN

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

### RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

#### Memorial Resolutions

**SCR 58** by Jackson, In memory of Dean Neugent.

**SR 921** by Jackson, In memory of Sam Howard Bass, Jr., of Houston.

**SR 923** by Jackson, In memory of John E. Riley of La Porte.

**SR 934** by Zaffirini, In memory of Lilia Caballero de Cavazos of Laredo.

**HCR 50** (Brimer), In memory of William Glenn Smiley, Jr., of Fort Worth.

**HCR 52** (Estes), In memory of Minnie Rhea Wood of Wichita Falls.

**HCR 53** (Ogden), In memory of James H. Copp.

**HCR 127** (Brimer), In memory of Tarrence Leon White of Fort Worth.

#### Congratulatory Resolutions

**SR 922** by Jackson, Commending Dianne Thompson for her contributions to the role of women in politics.

**SR 924** by Jackson, Congratulating Deborah Michelle Batts of West Columbia on her home school graduation.

**SR 925** by Jackson, Congratulating Brad Wimberley of Sweeny on his high school graduation.

**SR 926** by Jackson, Congratulating Nathan Lynn Charbula of El Campo on his home school graduation.

**SR 927** by Jackson, Congratulating Joy Elizabeth Denton of Angleton on her home school graduation.

**SR 928** by Jackson, Congratulating Justin Dale Rickey of Lake Jackson on his home school graduation.

**SR 929** by Jackson, Congratulating James Gerad Caldwell of Lake Jackson on his home school graduation.

**SR 930** by Ellis, Commending the Barkays for the legacy of their music.

**SR 931** by Ellis, Congratulating Monica and Charlie Rosenstein on the birth of their son, Corbin William Rosenstein.

**SR 932** by Barrientos, Commending the Austin Farmers' Market for its contributions to the community.

**SR 933** by Staples, Congratulating the science team of Jacksonville High School in Jacksonville for winning a state championship.

**SR 935** by Estes, Congratulating Will Osborne of Wichita Falls for winning a state golf championship.

**HCR 71** (Brimer), Honoring Coach Robert Hughes of Dunbar High School for being the most successful high school basketball coach in history.

**HCR 128** (Brimer), Congratulating the Fort Worth Dunbar High School boys' basketball team on winning the 2003 UIL Class 4A state championship.

**HCR 149** (Estes), Honoring Purple Heart Recipient James Virdell of Wichita Falls.

**HCR 160** (Brimer), Congratulating the Everman High School boy's basketball team on winning the 2003 UIL Class 3A state championship.

#### **Official Designation Resolution**

**SR 936** by Shapiro, Proclaiming the marching band of Coppell High School in Coppell the Official Texas State Band for the 2004 Saint Patrick's Day Parade in Dublin, Ireland.

#### **RECESS**

On motion of Senator Whitmire, the Senate at 3:22 p.m. recessed until 8:00 a.m. tomorrow for the Local and Uncontested Calendar Session.

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**APPENDIX**

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**COMMITTEE REPORTS**

The following committee reports were received by the Secretary of the Senate in the order listed:

May 21, 2003

**BUSINESS AND COMMERCE — CSHB 1232**

**INTERGOVERNMENTAL RELATIONS — HB 560, HB 424, HB 893, HB 983, CSHB 1108, HB 1197, HB 1459, HB 1675, HB 2159, HB 2684, HB 2889, HB 3282, HB 3561**

**HEALTH AND HUMAN SERVICES — SB 1086, CSSB 1132, CSSB 1787, CSHB 111, CSHB 727, CSHB 1119, CSHB 1743, CSHB 2185, CSHB 2350**

**BUSINESS AND COMMERCE — CSHB 849**

**HEALTH AND HUMAN SERVICES — CSHB 1723**

**CRIMINAL JUSTICE — SB 1953, HB 13, HB 28, HB 32, HB 42, HB 171, HB 254, HB 284, HB 297, HB 562, HB 616, HB 670, HB 724, HB 864, HB 888, HB 1027, HB 1060, HB 1180, HB 1704, HB 1769, HB 2002, HB 2071, HB 2128, HB 2248, HB 2622, HB 2892, HB 3517**

**STATE AFFAIRS — CSHB 54, CSHB 725, CSHB 948, CSHB 1446, CSHB 1517, CSHB 1695, CSHB 2153, CSHB 3242**

**JURISPRUDENCE — CSHB 320, CSHB 529, HB 1833 (Amended), CSHB 3304**

**BUSINESS AND COMMERCE — HB 1020, HB 1296, HB 1329, HB 1338, HB 2033, HB 2112, HB 2528, HB 2548, HB 3179, HJR 23, SB 1193**

**CRIMINAL JUSTICE — CSSB 1881, CSHB 1670**

**INFRASTRUCTURE DEVELOPMENT AND SECURITY — CSHB 1733**

**NATURAL RESOURCES — CSHB 2250, CSHB 2320, HB 2660, HB 2663, CSHB 3152, CSHB 547, CSHB 1858, CSHB 2470**

**SIGNED BY GOVERNOR**

May 20, 2003

**SB 271, SB 347, SB 360, SB 437, SB 441, SB 564, SB 567, SB 667, SB 821, SB 828, SB 855, SB 948, SB 959, SB 982, SB 988, SB 1013, SB 1024, SB 1060, SB 1094, SB 1183, SB 1400, SB 1454, SB 1588, SB 1594, SB 1635**



**In Memory**  
**of**  
**Jason Eric Bentley**  
**Senate Resolution 918**

WHEREAS, The untimely and tragic death of Jason Eric Bentley of Hurst on May 12, 2003, at the age of 35, has brought a great loss to all who were privileged to know this outstanding Texan; and

WHEREAS, Born in 1968 at Fort Smith, Arkansas, Mr. Bentley grew up in Hurst and attended L. D. Bell High School before embarking on a successful 10-year career in the United States Army; for five years he served at the army's premier combat training institute, the National Training Center at Fort Irwin, California, and during his tenure he was assigned to bases in both Texas and South Korea, ultimately attaining the rank of staff sergeant; and

WHEREAS, Throughout his military career, Sergeant Bentley proved himself to be a serviceman of the very highest caliber, earning the respect and admiration of peers and commanding officers alike for the exemplary leadership and technical skills he displayed in every one of his diverse assignments; on his return to civilian life in 2002, he was hired by the Vinnell Corporation to work as a military expert and training specialist at its offices located in Riyadh, Saudi Arabia; and

WHEREAS, This relocation to the Middle East was profoundly difficult for a man who treasured every moment of the time he spent with his beloved daughter, Sarah Marie, the light and joy of his life; Jason Bentley will be forever remembered by his family and friends for the warmth, compassion, and kindness he brought into the lives of others, gifts that will endure long after his passing; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 78th Legislature, hereby extend sincere condolences to the bereaved family of Jason Eric Bentley: his daughter, Sarah Marie Bentley; his parents, William and Gail Bentley; his brother, Bill Bentley, Jr.; and his many other relatives and friends; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the members of his family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of Jason Eric Bentley.

BRIMER  
NELSON

**In Memory**  
**of**  
**George Kozmetsky**  
**Senate Resolution 882**

WHEREAS, The Senate of the State of Texas joins the citizens of Austin in mourning the loss of Dr. George Kozmetsky, who died April 30, 2003, at the age of 85; and

WHEREAS, George Kozmetsky was born in Seattle, Washington, on October 5, 1917, to George and Nadya Omelanitz Kozmetsky; he earned a bachelor's degree from the University of Washington in 1937 and a master's degree in business administration from Harvard University in 1947; he later returned to Harvard and earned a doctorate in commercial science in 1957; and

WHEREAS, George Kozmetsky served his country as an Army medical corps officer during World War II and was awarded a Bronze Star, a Silver Star, and a Purple Heart; and

WHEREAS, One of the most innovative businessmen in the nation, Dr. Kozmetsky cofounded Teledyne, Incorporated, a defense electronics company, in 1960; the corporation grew into an amalgam of 130 companies that produced a broad spectrum of products, including sophisticated electronics, engine tools, stereo speakers, and seismic systems to monitor earthquakes; and

WHEREAS, Dr. Kozmetsky served as dean of the College and Graduate School of Business at The University of Texas at Austin for 16 years; assisted by the university, he established the IC<sup>2</sup> Institute, which operates the Austin Technology Incubator and the Clean Energy Incubator and sponsors research around the world on economic and technology issues; he also served as the executive associate for economic affairs for The University of Texas System; and

WHEREAS, Dr. Kozmetsky was the coauthor of *Modern American Capitalism*, *Global Economic Competition*, and *Zero Time*; and

WHEREAS, A noted philanthropist, Dr. Kozmetsky created the RGK Foundation with his wife, Ronya, in 1966; the foundation has distributed millions of dollars to hundreds of not-for-profit corporations in Texas and elsewhere and has supported a wide range of projects, such as mathematics and science education programs in California and housing for hurricane victims in Honduras; George and Ronya also gave generously to Austin art and civic organizations and to The University of Texas at Austin and Saint Edward's University, and they recently funded joint research at The University of Texas and Stanford University into technology and global prosperity; and

WHEREAS, A visionary who considered education a prime force in moving society forward, George Kozmetsky brought wide understanding and expertise to the collaboration between educational institutions, government, and businesses to spur technological growth; he was awarded the National Medal of Technology Award by President Clinton in 1993; and

WHEREAS, George Kozmetsky lent his wealth of knowledge to numerous corporate boards, including Gulf Oil, La Quinta, Heizer, Incorporated, and Dell Corporation; he also served on state and federal task forces, commissions, and policy boards and regularly provided special testimony on business and technology issues to state and federal legislators; and

WHEREAS, A devoted husband, father, and grandfather, George Kozmetsky leaves behind memories that will be treasured forever by his family and many friends; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 78th Legislature, hereby extend sincere condolences to the bereaved family of George Kozmetsky: his wife, Ronya; his daughter, Nadya Scott; his son and daughter-in-law, Gregory and Cindy Kozmetsky; and his seven grandchildren and four great-grandchildren; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the members of his family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of George Kozmetsky.

BARRIENTOS

