

SEVENTY-FIFTH DAY

THURSDAY, MAY 22, 2003

PROCEEDINGS

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 Most Reverend Gregory M. Aymond, Bishop of the Catholic Diocese of Austin, offered the invocation as follows:

Loving and faithful God, we thank You for this day, which is gift to us from You. Help us to use today our gifts and all the resources You have provided for us in a way that will be pleasing to You and beneficial to others. In the midst of this busy day, we pause to pray for our nation. Bless in particular President Bush, strengthen our military men and women in Iraq and their families. Please give them protection and return them safely home to us. As the work of our Texas Senate continues, please give them Your wisdom that they may enact laws that will strengthen our state and foster the good and dignity of all those entrusted to their leadership. Bless each Member of our Senate and their special needs. Lord God, we need You and Your wisdom to accomplish what is good. Therefore we ask for these gifts in faith from You who live and love forever and ever. 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 RESOLUTION ON FIRST READING

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

SCR 56 by Armbrister

Directing the White-tailed Deer Advisory Committee to address how habitat relates to the ecological diversity of the state and to study the role of the wildlife biologist in the development of management plans and in the utilization of suitable management practices, including population goals and control, yearly census data, supplemental feeding and food plots, and genetic management.

To Committee on Natural Resources.

HOUSE RESOLUTION ON FIRST READING

The following resolution received from the House was read first time and referred to the committee indicated:

HCR 199 to Committee on State Affairs.**SENATE RESOLUTION 906**

Senator Van de Putte offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Trinity University for its academic and athletic excellence; and

WHEREAS, Trinity University enjoys a reputation as one of the nation's top private undergraduate institutions; the school offers a traditional and rigorous college curriculum for academically talented students, while also ensuring that they have the opportunity to learn about the "real-world" demands of contemporary society; and

WHEREAS, Located in the vibrant and culturally rich City of San Antonio, the school provides students with an outstanding campus, gifted and committed faculty and staff mentors, generous financial support, and a host of opportunities for research, travel, and experiential learning; and

WHEREAS, Moreover, Trinity University offers highly competitive athletic programs and encourages its athletes to become champions; in the fall of 2002, the football team accumulated a school record of 14 victories, and the men's and women's soccer teams advanced to the semifinals of the National Collegiate Athletic Association; during the spring of 2003, the men's and women's tennis teams each won their 10th and 11th Southern Conference Athletic Conference titles, respectively; and

WHEREAS, Trinity University provides a unique environment that encourages close interaction between students and faculty and inspires students to excel and become purposeful about their future plans; and

WHEREAS, The school is rightfully proud that it educates some of the state's most talented young Texans, preparing them for positions of leadership and responsibility in a wide array of professional fields; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 78th Legislature, hereby congratulate Trinity University on its first-rate academic and athletic programs and on earning a reputation as one of our state's and nation's best private undergraduate institutions; and, be it further

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

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

GUESTS PRESENTED

Senator Van de Putte was recognized and introduced to the Senate Dr. Michael Fischer, Vice-president of Academic Affairs, Trinity University; Bob King, Athletic Director; and Allison Wooley, women's basketball team player; accompanied by a delegation from Trinity University in San Antonio.

The Senate welcomed its guests.

HOUSE BILL 1324 REREFERRED

Senator Staples submitted a Motion In Writing requesting that **HB 1324** be withdrawn from the Subcommittee on Agriculture and rereferred to the Committee on Natural Resources.

The Motion In Writing prevailed without objection.

SENATE RESOLUTION 940

Senator Zaffirini offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Ashley Cynara Mitchell, a student at United High School, who was selected as the Laredo Youth of the Year for 2003; and

WHEREAS, The Laredo Youth of the Year program is sponsored by the United States Border Patrol and Senator Judith Zaffirini to honor an outstanding student who excels academically and serves as a leader in the community; the Youth of the Year is selected from the nine students who were named Youth of the Month during the academic year; and

WHEREAS, Throughout her years in high school, Ashley worked hard to earn excellent grades, and she participated in numerous extracurricular activities; she was punctual and well prepared for her classes, and she garnered numerous accolades for her proficiency in debate and extemporaneous speaking and for her musical and athletic talents; and

WHEREAS, Ashley is president of the National Honor Society and participates in many other clubs and organizations; she is active in her church and volunteers in nursing homes and shelters for the homeless; and

WHEREAS, Ashley is known for her integrity, her dedication to her studies and her commitment to succeed; she has earned a place in the freshman class at the University of Notre Dame for the fall of 2003; and

WHEREAS, Ashley is an exemplary young lady whose unique qualities and notable achievements are a source of much pride to her family, her school and her community; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 78th Legislature, hereby congratulate Ashley Cynara Mitchell on her selection as the Laredo Youth of the Year for 2003 and extend to her best wishes for success in the future; and, be it further

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

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

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate Ashley Mitchell, Laredo Youth of the Year, accompanied by her parents, Dr. Tom and Dr. Linda Mitchell; her sponsors, Oscar H. Garza, Jr., and Lee Bargerhuff; and other sponsors.

The Senate welcomed its guests.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 22, 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:

HCR 248, Recognizing Hill's Cafe in Austin as the home of the Texas Heritage Songwriters Collection.

SCR 52, Paying tribute to the live oak champion in Texas located in the San Bernard National Wildlife Refuge.

THE HOUSE HAS CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 545 (non-record vote)

HB 882 (House concurs by a vote of 147 yeas, 0 nays, 1 pnv)

HB 883 (non-record vote)

HB 980 (non-record vote)

HB 1199 (non-record vote)

HB 1264 (non-record vote)

HB 1471 (non-record vote)

HB 1730 (House concurs by a vote of 143 yeas, 0 nays, 1 pnv)

HB 1822 (non-record vote)

HB 1937 (House concurs by a vote of 143 yeas, 0 nays, 1 pnv)

HB 2021 (non-record vote)

HB 2679 (non-record vote)

HB 2926 (non-record vote)

HB 3149 (non-record vote)

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

HB 4

House Conferees: Nixon - Chair/Gattis/King/Luna/Woolley/

HB 1702

House Conferees: Taylor - Chair/Davis, John/Geren/Miller/Smith, Wayne/

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

SB 504

House Conferees: Kolkhorst - Chair/Bohac/Elkins/Ellis/Solomons/

SB 718

House Conferees: McReynolds - Chair/Laubenberg/Taylor/Truitt/Zedler/

SB 880

House Conferees: Capelo - Chair/Allen/Haggerty/Stick/Talton/

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

SB 104 (House adopts ccr by a vote of 142 yeas, 0 nays, 1 pnv)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE RESOLUTION 603

Senator Van de Putte offered the following resolution:

SR 603, In memory of Rodrigo Gonzalez Garza of San Antonio.

The resolution was again read.

Senator Van de Putte was recognized and introduced to the Senate family members of Rodrigo Gonzalez Garza: his parents, Ramiro and Oralia Gonzalez; his brothers, Ramiro Gonzalez, Jr., and Ricardo Gonzalez; and his sister, Veronica, and her husband, Rolando Valadez; accompanied by other family members.

The Senate welcomed its guests and extended its sympathy.

The resolution was previously adopted on Thursday, April 10, 2003.

In honor of the memory of Rodrigo Gonzalez Garza, the text of **SR 603** is printed at the end of today's *Senate Journal*.

PHYSICIAN OF THE DAY

Senator Madla was recognized and presented Dr. Mary Nguyen-Tool of Castroville as the Physician of the Day, accompanied by her husband, Tim.

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

GUESTS PRESENTED

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

The Senate welcomed its guests.

CONCLUSION OF MORNING CALL

The Presiding Officer, Senator Lucio in Chair, at 11:43 a.m. announced the conclusion of morning call.

SENATE CONCURRENT RESOLUTION 55 ON SECOND READING

Senator Barrientos moved to suspend the regular order of business to take up for consideration **SCR 55** at this time on its second reading:

SCR 55, Designating the Mexic-Arte Museum in Austin as the Official Mexican and Mexican American Art Museum of Texas.

The motion prevailed by a viva voce vote.

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

HOUSE BILL 1890 ON SECOND READING

Senator Williams moved to suspend the regular order of business to take up for consideration **HB 1890** at this time on its second reading:

HB 1890, Relating to tuition rebates to certain undergraduate students who graduate from an institution of higher education without excessive semester credit hours.

The motion prevailed by a viva voce vote.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1890 ON THIRD READING

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1890** 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.

SENATE BILL 1271 WITH HOUSE AMENDMENTS

Senator Armbrister called **SB 1271** 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 1271** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to incentives to encourage gas utilities to invest in new infrastructure.

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

SECTION 1. Chapter 104, Utilities Code, is amended by adding Subchapter G to read as follows:

**SUBCHAPTER G. INTERIM COST RECOVERY
AND RATE ADJUSTMENT**

Sec. 104.301. INTERIM ADJUSTMENT FOR CHANGES IN INVESTMENT.

(a) A gas utility that has filed a rate case under Subchapter C within the preceding two years may file with the regulatory authority a tariff or rate schedule that provides for an interim adjustment in the utility's monthly customer charge or initial block rate to recover the cost of changes in the investment in service for gas utility services. The adjustment shall be allocated among the gas utility's classes of customers in the same manner as the cost of service was allocated among classes of customers in the utility's latest effective rates for the area in which the tariff or rate schedule is implemented. The gas utility shall file the tariff or rate schedule, or the annual adjustment under Subsection (c), with the regulatory authority at least 60 days before the proposed implementation date of the tariff, rate schedule, or annual adjustment. The gas utility shall provide notice of the tariff, rate schedule, or annual adjustment to affected customers by bill insert or direct mail not later than the 45th day after the date the utility files the tariff, rate schedule, or annual adjustment with the regulatory authority. During the 60-day period, the regulatory authority may act to suspend the implementation of the tariff, rate schedule, or annual adjustment. After the issuance of a final order or decision by a regulatory authority in a rate case that is filed after the implementation of a tariff or rate schedule under this section, any change in investment that has been included in an interim adjustment in accordance with the tariff or rate schedule under this section shall no longer be subject to subsequent review for reasonableness or prudence. Until the issuance of a final order or decision by a regulatory authority in a rate case that is filed after the implementation of a tariff or rate schedule under this section, all amounts collected under the tariff or rate schedule before the filing of the rate case are subject to refund.

(b) The amount the gas utility shall adjust the utility's rates upward or downward under the tariff or rate schedule each calendar year is based on the difference between the value of the invested capital for the preceding calendar year and the value of the invested capital for the calendar year preceding that calendar year.

The value of the invested capital is equal to the original cost of the investment at the time the investment was first dedicated to public use minus the accumulated depreciation related to that investment.

(c) The interim adjustment shall be recalculated on an annual basis in accordance with the requirements of Subsection (b). The gas utility may file a request with the regulatory authority to suspend the operation of the tariff or rate schedule for any year. The request must be in writing and state the reasons why the suspension is justified. The regulatory authority may grant the suspension on a showing by the utility of reasonable justification.

(d) A gas utility may only adjust the utility's rates under the tariff or rate schedule for the return on investment, depreciation expense, ad valorem taxes, revenue related taxes, and incremental federal income taxes related to the difference in the value of the invested capital as determined under Subsection (b). The return on investment, depreciation, and incremental federal income tax factors used in the computation must be the same as the factors reflected in the final order issued by or settlement agreement approved by the regulatory authority establishing the gas utility's latest effective rates for the area in which the tariff or rate schedule is implemented.

(e) A gas utility that implements a tariff or rate schedule under this section shall file with the regulatory authority an annual report describing the investment projects completed and placed in service during the preceding calendar year and the investments retired or abandoned during the preceding calendar year. The annual report shall also state the cost, need, and customers benefited by the change in investment.

(f) In addition to the report required under Subsection (e), the gas utility shall file with the regulatory authority an annual earnings monitoring report demonstrating the utility's earnings during the preceding calendar year.

(g) If the gas utility is earning a return on invested capital, as demonstrated by the report filed under Subsection (f), of more than 75 basis points above the return established in the latest effective rates approved by a regulatory authority for the area in which the tariff or rate schedule is implemented under this section, the gas utility shall file a statement with that report stating the reasons why the rates are not unreasonable or in violation of law.

(h) If a gas utility that implements a tariff or rate schedule under this section does not file a rate case under Subchapter C before the fifth anniversary of the date on which the tariff or rate schedule takes effect, the gas utility shall file a rate case under that subchapter not later than the 180th day after that anniversary in relation to any rates subject to the tariff or rate schedule.

(i) This section does not limit the power of a regulatory authority under Section 104.151.

(j) A gas utility implementing a tariff or rate schedule under this section shall annually pay to the railroad commission the utility's proportionate share of the railroad commission's incremental costs related to the administration of the interim rate adjustment mechanism provided by this section.

SECTION 2. This Act takes effect September 1, 2003.

Floor Amendment No. 1

Amend **CSSB 1271** in Section 104.301(j), Utilities Code, as added by SECTION 1 of the bill (House committee printing, page 4, lines 18-20), by striking "shall annually pay to the railroad commission the utility's proportionate share of the railroad commission's incremental costs" and substitute "shall reimburse the railroad commission the utility's proportionate share of the railroad commission's costs".

The amendments were read.

Senator Armbrister moved to concur in the House amendments to **SB 1271**.

The motion prevailed by a viva voce vote.

HOUSE BILL 2474 ON SECOND READING

Senator Deuell moved to suspend the regular order of business to take up for consideration **HB 2474** at this time on its second reading:

HB 2474, Relating to electronic surveillance.

The motion prevailed by a viva voce vote.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2474 ON THIRD READING

Senator Deuell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2474** 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 1454 ON SECOND READING

Senator Janek moved to suspend the regular order of business to take up for consideration **HB 1454** at this time on its second reading:

HB 1454, Relating to powers of a property owners' association relating to restrictive covenants in certain subdivisions.

The motion prevailed by a viva voce vote.

The bill was read second time.

Senator Janek offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 1454** by striking lines 19 and 20 (Senate committee report version) and inserting the following:

"that is adjacent to the Gulf of Mexico, and that is adjacent to a county having a population of 2.8 million or more."

The floor amendment was read and was adopted by a viva voce vote.

Senator Lindsay offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 1454** by adding the following appropriately numbered SECTIONS:

SECTION _____. Section 202.004(c), Property Code, is repealed.

SECTION _____. The repeal of Section 202.004(c), Property Code, by this Act applies only to civil damages assessed for a violation of a restrictive covenant that occurs on or after the effective date of this Act. Civil damages assessed for a violation of a restrictive covenant that occurs before the effective date of this Act are governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

The floor amendment was read and was adopted by a viva voce vote.

Senator Lindsay offered the following amendment to the bill:

Floor Amendment No. 3

Amend **HB 1454** by inserting the following appropriately numbered SECTIONS:

SECTION _____. Section 209.008, Property Code, is amended by adding Subsection (h) to read as follows:

(h) An attorney may not enter into a contract or agreement to represent a property owners' association under which legal fees are charged to an owner's assessment account and payment of the fees is delayed until after the account is collected from the owner or the occurrence of another specified event. An attorney who provides services described by this subsection may not collect payment for legal fees for those services directly from the owner from whom the association has the right to collect the legal fees or defer payment of the fees until the association receives payment from the owner. This subsection does not prohibit an attorney from collecting a debt, including legal fees, and forwarding the amount collected to the association.

SECTION _____. Section 209.008(h), Property Code, as added by this Act, applies only to a contract or agreement entered into on or after the effective date of this Act. A contract or agreement entered into before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

The floor amendment was read and was adopted by a viva voce vote.

Senator Lindsay offered the following amendment to the bill:

Floor Amendment No. 4

Amend **HB 1454** by inserting the following appropriately numbered SECTIONS:

SECTION _____. The heading to Chapter 203, Property Code, is amended to read as follows:

**CHAPTER 203. ENFORCEMENT OF PROVISIONS RELATING
TO LAND USE RESTRICTIONS OR PROPERTY OWNERS'
ASSOCIATIONS IN CERTAIN COUNTIES**

SECTION _____. Section 203.003, Property Code, is amended to read as follows:

Sec. 203.003. **ENFORCEMENT AUTHORITY OF COUNTY ATTORNEY** [AUTHORIZED TO ENFORCE RESTRICTIONS]. (a) The county attorney may:

(1) sue in a court of competent jurisdiction to enjoin or abate a violation of this title by a property owners' association or an owner or a violation [violations] of a restriction contained or incorporated by reference in a properly recorded plan, plat, replat, or other instrument affecting a real property subdivision located in the county, regardless of the date on which the instrument was recorded; and

(2) recover from a property owners' association or an owner that violates this title a reasonable penalty as determined by the court not to exceed \$500 for each violation.

(b) The county attorney may not enforce a restriction relating to race or any other restriction that violates the state or federal constitution.

SECTION _____. Section 203.003, Property Code, as amended by this Act, applies only to a violation of Title 11, Property Code, that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

The floor amendment was read and was adopted by a viva voce vote.

On motion of Senator Janek and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 1454 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1454 ON THIRD READING

Senator Janek moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1454** 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 1366 ON SECOND READING

Senator Jackson moved to suspend the regular order of business to take up for consideration **HB 1366** at this time on its second reading:

HB 1366, Relating to the environmental regulation and remediation of certain dry cleaning facilities; providing penalties.

The motion prevailed by a viva voce vote.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1366 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 1366** 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 2351 ON SECOND READING

Senator Averitt moved to suspend the regular order of business to take up for consideration **HB 2351** at this time on its second reading:

HB 2351, Relating to certain fees collected by the Parks and Wildlife Department.

The motion prevailed by a viva voce vote.

RECORD OF VOTE

Senator Jackson asked to be recorded as voting "Nay" on the suspension of the regular order of business.

The bill was read second time and was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Jackson asked to be recorded as voting "Nay" on the passage of **HB 2351** to third reading.

HOUSE BILL 2351 ON THIRD READING

Senator Averitt moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2351** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Jackson.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Jackson asked to be recorded as voting "Nay" on the final passage of **HB 2351**.

SENATE BILL 957 WITH HOUSE AMENDMENT

Senator Van de Putte called **SB 957** 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.

Amendment

Amend **SB 957** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to emergency medication kits maintained for a veterans home.

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

SECTION 1. Section 562.108(a), Occupations Code, is amended to read as follows:

(a) A Class A or Class C pharmacy may maintain controlled substances and dangerous drugs in an emergency medication kit used at an institution licensed under Chapter 242 or 252, Health and Safety Code. A United States Department of Veterans Affairs pharmacy or another federally operated pharmacy may maintain controlled substances and dangerous drugs in an emergency medication kit used at an institution that is licensed under Chapter 242, Health and Safety Code, and is a veterans home, as defined by Section 164.002, Natural Resources Code. The controlled substances and dangerous drugs may be used only for the emergency medication needs of a resident at the [that] institution.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

The amendment was read.

Senator Van de Putte moved to concur in the House amendment to **SB 957**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1024 ON SECOND READING

Senator Shapiro moved to suspend the regular order of business to take up for consideration **HB 1024** at this time on its second reading:

HB 1024, Relating to staff development requirements in public schools.

The motion prevailed by a viva voce vote.

The bill was read second time.

Senator Shapiro offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 1024** as follows:

(1) In SECTION 1 of the bill (House engrossment, page 1, lines 4-5), strike "Sections 21.451(a) and (b), Education Code, are amended" and substitute "Section 21.451, Education Code, is amended by amending Subsections (a) and (b) and adding Subsection (d)".

(2) In SECTION 1 of the bill (House engrossment, page 2, between lines 18 and 19), insert the following:

(d) The staff development may:

(1) include training in:

(A) technology;

(B) conflict resolution; and

(C) discipline strategies, including classroom management, district discipline policies, and the student code of conduct adopted under Section 37.001 and Chapter 37;

(2) include training that:

- (A) relates to instruction of students with disabilities; and
(B) is designed for educators who work primarily outside the area of special education; and
(3) include instruction as to what is permissible under law, including opinions of the United States Supreme Court, regarding prayer in public school.

The committee amendment was read and was adopted by a viva voce vote.

VOTE RECONSIDERED

On motion of Senator Shapiro and by unanimous consent, the vote by which Committee Amendment No. 1 was adopted was reconsidered.

Question — Shall Committee Amendment No. 1 to **HB 1024** be adopted?

Senator Shapleigh offered the following amendment to the amendment:

Floor Amendment No. 1

Amend Senate Committee Amendment No. 1 to **HB 1024** as follows:

- (1) In proposed Section 21.451(d)(1)(C), Education Code (Senate committee printing, page 1, line 22), after the semicolon, add "and".
(2) Strike proposed Section 21.451(d)(2), Education Code (Senate committee printing, page 1, lines 23-27), and renumber the subsequent subdivisions accordingly.
(3) Add the following appropriately numbered item to the amendment and renumber the subsequent items accordingly:

(_) In SECTION 1 of the bill (House engrossment, page 1, lines 37-57), strike amended Section 21.451(a), Education Code, and substitute the following:

(a) The staff development provided by a school district must:

- (1) be conducted in accordance with [minimum] standards developed by the district;
(2) be designed to improve education in the district; and
(3) [commissioner for program planning, preparation, and improvement.

The staff development:

[1] must include training in:

[A] technology;

[B] conflict resolution; and

[C] discipline strategies, including classroom management, district discipline policies, and the student code of conduct adopted under Section 37.001 and Chapter 37;

[2] must include training that:

(A) relates to instruction of students with disabilities; and

(B) is designed for educators who work primarily outside of the area of special education[, and]

[3] may include instruction as to what is permissible under law, including opinions of the United States Supreme Court, in regard to prayers in public school].

The amendment to the amendment was read and failed of adoption by the following vote: Yeas 9, Nays 18.

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

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

Absent: Armbrister, Bivins, Duncan, Whitmire.

Senator Shapleigh offered the following amendment to the amendment:

Floor Amendment No. 2

Amend Senate Committee Amendment No. 1 to **HB 1024** as follows:

(1) In item (2) of the amendment (Senate committee printing, page 1, line 18), strike proposed Section 21.451(d)(1)(A), Education Code, and reletter the subsequent paragraphs accordingly.

(2) Add the following appropriately numbered item to the amendment and renumber the subsequent items accordingly:

() In SECTION 1 of the bill (House engrossment, page 1, lines 37-57) strike amended Section 21.451(a), Education Code, and substitute the following:

(a) The staff development provided by a school district must:

(1) include training in technology;

(2) be conducted in accordance with [minimum] standards developed by the district; and

(3) be designed to improve education in the district [commissioner for program planning, preparation, and improvement. The staff development:

[(!) must include training in:

[(A) technology;

[(B) conflict resolution; and

[(C) discipline strategies, including classroom management, district discipline policies, and the student code of conduct adopted under Section 37.001 and Chapter 37;

[(2) must include training that:

[(A) relates to instruction of students with disabilities; and

[(B) is designed for educators who work primarily outside of the area of special education; and

[(3) may include instruction as to what is permissible under law, including opinions of the United States Supreme Court, in regard to prayers in public school].

The amendment to the amendment was read and failed of adoption by a viva voce vote.

Senator Van de Putte offered the following amendment to the amendment:

Floor Amendment No. 3

Amend Senate Committee Amendment No. 1 to **HB 1024** in proposed Section 21.451(d), Education Code (Senate committee printing, page 1, line 16), by striking "may" and substituting "provided by a school district at a campus must, if determined necessary by the campus-level committee".

The amendment to the amendment was read and failed of adoption by the following vote: Yeas 9, Nays 18.

Yea: Barrientos, Ellis, Gallegos, Lucio, Madla, Shapleigh, Van de Putte, West, Zaffirini.

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

Absent: Bivins, Duncan, Hinojosa, Whitmire.

Question recurring on the adoption of Committee Amendment No. 1, the amendment was again adopted by a *viva voce* vote.

On motion of Senator Shapiro and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 1024 as amended was passed to third reading by a *viva voce* vote.

HOUSE BILL 1024 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 1024** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nay: Zaffirini.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

GUEST PRESENTED

The Presiding Officer, Senator Lucio in Chair, introduced to the Senate Galveston County Commissioner Eddie Janek, who is the father of Senator Janek.

The Senate welcomed its guest.

COMMITTEE SUBSTITUTE HOUSE BILL 1165 ON SECOND READING

Senator Janek moved to suspend the regular order of business to take up for consideration **CSHB 1165** at this time on its second reading:

CSHB 1165, Relating to corporations.

The motion prevailed by a *viva voce* vote.

The bill was read second time.

Senator Brimer offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 1165** to read as follows:

In SECTION 43, page 27, line 25, add new subsection (15) and renumber accordingly.

"(15) Article 2.23A(E)(7) TEXAS NON-PROFIT CORPORATION ACT.
(Article 1396-2.23A(E)(7), Vernon's Texas Civil Statutes)."

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. 2

Amend **CSHB 1165** by adding the following appropriately numbered SECTION to the bill and renumbering SECTIONS accordingly:

SECTION _____. Part Five, Texas Miscellaneous Corporation Laws Act (Article 1302-5.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Article 5.20 to read as follows:

Art. 5.20. AUDIT AND CERTIFICATION OF FINANCIAL REPORT. A. In this Article, "financial report" means a balance sheet, income or loss statement, cash flow statement, or any other presentation of financial information, however denominated, concerning a corporation that is intended to portray a significant portion of the corporation's financial position.

B. (1) Each domestic or foreign corporation doing business in this state that is not a public reporting company under Section 13(a) or 15(d), Securities Exchange Act of 1934 (15 U.S.C. Sections 78m(a), 78o(d)), as amended, shall certify annually in a filing with the State Securities Board that:

(a) each financial report prepared by or for the corporation:

(i) has been reviewed by the officers signing the filing;

(ii) does not contain any untrue statement of material fact or omit a material fact necessary to make the statements made, considering the circumstances under which the statements were made, not misleading; and

(iii) fairly presents in all material respects the financial condition and results of operations of the corporation as of, and for, the periods presented in the report; and

(b) the officers signing the filing are responsible for establishing and maintaining internal controls and have:

(i) designed the internal controls to ensure that material information relating to the corporation is made known to the officers;

(ii) evaluated the effectiveness of the internal controls as of a date within 90 days before the date of the report;

(iii) presented in the report the signing officers' conclusions about the effectiveness of the internal controls based on that evaluation;

(iv) disclosed to the corporation's auditors all significant deficiencies in the design or operation of internal controls that could adversely affect the corporation's ability to record, process, summarize, and report financial data;

(v) identified for the corporation's auditors:

(A) any material weakness in internal controls; and

(B) any fraud, regardless of whether material, that involves management or other employees who have a significant role in the corporation's internal controls; and

(vi) indicated in the report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls after the date of the evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

(2) The State Securities Board may adopt rules to administer this section.

(3) This section does not apply to:

(a) a corporation without capital stock that is not organized and engaged in business for profit; or

(b) an S corporation, as defined by Section 1361, Internal Revenue Code of 1986, as amended.

C. (1) An officer or director of a corporation, or another person acting under the direction of an officer or director, commits an offense if the director, officer, or other person takes any action to fraudulently influence, coerce, manipulate, or mislead an independent accountant in the performance of an audit of a financial report of the corporation for the purpose of making the financial report materially misleading.

(2) An offense under this section is a state jail felony.

D. (1) A corporation subject to this Article or an officer, employee, contractor, subcontractor, or agent of the corporation commits an offense if the corporation or person discharges, demotes, suspends, threatens, harasses, or in any manner discriminates against an employee in the employee's terms and conditions of employment because of any lawful act by the employee to:

(a) provide information or otherwise assist in an investigation regarding conduct that the employee reasonably believes is a violation of this Article; or

(b) file, cause to be filed, testify at, participate in, or otherwise assist in a proceeding relating to an alleged violation of this Article.

(2) An offense under this section is a state jail felony.

E. The Attorney General may conduct an investigation of a violation or threatened violation of this Article and may report the results of the investigation to an appropriate district or county attorney. On the request of a district or county attorney the Attorney General may assist in prosecution of an offense under this Article.

The floor amendment was read and was adopted by a viva voce vote.

Senator Van de Putte offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSHB 1165** by adding the following appropriately numbered SECTION and renumbering the subsequent SECTIONS of the bill appropriately:

SECTION _____. (a) Subchapter B, Chapter 2155, Government Code, is amended by adding Section 2155.0775 to read as follows:

Sec. 2155.0775. CERTAIN FOREIGN CORPORATIONS BARRED FROM PARTICIPATION IN STATE CONTRACTS. (a) In this section:

(1) "Domestic" means created or organized in the United States or under the law of the United States or any state.

(2) "Expanded affiliated group" has the meaning assigned to "affiliated group" by Section 1504(a), Internal Revenue Code of 1986, as that section existed on January 1, 2003.

(3) "Foreign" means created or organized in a country other than the United States or under the law of a country other than the United States.

(4) "Transaction" includes a series of transactions.

(b) A foreign corporation may not participate in state contracts that are subject to this subtitle, including contracts for which purchasing authority is delegated to a state agency, if:

(1) the foreign corporation acquires directly or indirectly substantially all of the properties held directly or indirectly by a domestic corporation; and

(2) immediately after the acquisition, more than 80 percent of the stock, by vote or value, of the foreign corporation is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation.

(c) A foreign corporation may not participate in state contracts that are subject to this subtitle, including contracts for which purchasing authority is delegated to a state agency, if:

(1) the foreign corporation acquires directly or indirectly properties constituting a trade or business of a domestic partnership;

(2) immediately after the acquisition and without regard to stock of the foreign corporation which is sold in a public offering related to the acquisition, more than 80 percent of the stock, by vote or value, of the foreign corporation is held by former partners of the domestic partnership;

(3) the foreign corporation does not have substantial business activities in the foreign country in which or under the law of which the corporation is created or organized when compared to the total business activities of the expanded affiliated group; and

(4) the stock of the foreign corporation is publicly traded and the principal market for the public trading of the stock is in the United States.

(d) Subsection (b)(2) shall be applied by substituting "50 percent" for "80 percent" with respect to a foreign corporation if:

(1) the corporation does not have substantial business activities in the foreign country in which or under the law of which the corporation is created or organized when compared to the total business activities of the expanded affiliated group; and

(2) the stock of the corporation is publicly traded and the principal market for the public trading of the stock is in the United States.

(e) For the purposes of this section, stock held by members of an expanded affiliated group that includes the foreign corporation shall not be taken into account in determining ownership.

(b) The changes in law made by this section to state contracting procedures apply only to a contract executed on or after the effective date of this Act. A contract executed before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

The floor amendment was read and was adopted by a viva voce vote.

On motion of Senator Janek and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSHB 1165 as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1165 ON THIRD READING**

Senator Janek moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1165** 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 1208 ON SECOND READING**

Senator Shapiro moved to suspend the regular order of business to take up for consideration **CSHB 1208** at this time on its second reading:

CSHB 1208, Relating to the mitigation of traffic congestion on highways; providing penalties.

The motion prevailed by a viva voce vote.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1208 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 1208** 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.

(Senator Armbriester in Chair)

HOUSE BILL 156 ON SECOND READING

On motion of Senator Ogden and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 156** at this time on its second reading:

HB 156, Relating to the grant of the power of eminent domain to a regional mobility authority.

The bill was read second time.

(President in Chair)

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 156** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 361.003, Transportation Code, is amended by adding Subsections (m)-(r) to read as follows:

(m) Except as otherwise provided in this section, the governing body of a regional mobility authority has the same powers and duties that the commission and the department have under Subchapter D relating to the condemnation or purchase of real property. Notwithstanding Section 361.135(a), the concurrence of the commission is not a prerequisite to the exercise of the power of condemnation by the governing body of the regional mobility authority.

(n) The governing body of a regional mobility authority may acquire real property by the exercise of the power of condemnation only if:

(1) the real property is located in a county that is part of the regional mobility authority; or

(2) the real property is not located within a county that is part of the regional mobility authority and the commissioners court of the county in which the real property is located concurs in the exercise of the power of eminent domain to acquire the property.

(o) Subsection (m) does not authorize the governing body of a regional mobility authority to condemn or purchase real property of a rapid transit authority operating under Chapter 451, Transportation Code, that was confirmed before July 1, 1985, and in which the principal municipality has a population of less than 750,000, unless the governing body of the regional mobility authority has entered into a written agreement with the governing body of the rapid transit authority specifying the terms and conditions under which the condemnation or purchase of the real property will occur.

(p) The governing body of a regional mobility authority may not file a declaration of taking as provided by Section 361.137 or take possession of property as provided by Section 361.138.

(q) With respect to a transportation project that is subject to Subpart C, 23 C.F.R. Part 450, a power granted by Subsection (m) may only be used if the transportation project for which property will be condemned or purchased is:

(1) included in the plan approved by the applicable metropolitan planning organization; and

(2) consistent with the statewide transportation plan and the statewide transportation improvement plan.

(r) A regional mobility authority may not condemn a bridge that is owned by a municipality or county and connects this state with the United Mexican States.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

The floor amendment was read and was adopted by a viva voce vote.

On motion of Senator Ogden and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 156 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 156 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 **HB 156** 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.

**COMMITTEE SUBSTITUTE
SENATE BILL 319 ON SECOND READING**

Senator Armbrister moved to suspend the regular order of business to take up for consideration **CSSB 319** at this time on its second reading:

CSSB 319, Relating to the death of or injury to an unborn child; providing penalties.

The motion prevailed by a viva voce vote.

RECORD OF VOTE

Senator Wentworth asked to be recorded as voting "Nay" on the suspension of the regular order of business.

The bill was read second time.

Senator Williams offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 319** (committee printing) as follows:

(1) In SECTION 2.02 of the bill, in added Section 19.06, Penal Code (page 1, lines 61 and 62), strike "CERTAIN CONDUCT EXCEPTED. It is an exception to the application of" and substitute "OTHER DEFENSES. It is a defense to prosecution under".

(2) In SECTION 2.04 of the bill, in added Section 22.12, Penal Code (page 2, lines 17 and 18), strike "CERTAIN CONDUCT EXCEPTED. It is an exception to the application of" and substitute "OTHER DEFENSES. It is a defense to prosecution under".

(3) In SECTION 2.05 of the bill, in added Section 49.12, Penal Code (page 2, lines 29 and 30), strike "CERTAIN CONDUCT EXCEPTED. It is an exception to the application of" and substitute "OTHER DEFENSES. It is a defense to prosecution under".

The floor amendment was read.

On motion of Senator Williams, Floor Amendment No. 1 was withdrawn.

CSSB 319 was passed to engrossment by a viva voce vote.

RECORD OF VOTE

Senator Wentworth asked to be recorded as voting "Nay" on the passage of **CSSB 319** to engrossment.

(Senator West in Chair)

COMMITTEE SUBSTITUTE
SENATE BILL 319 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 319** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yea: 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, West, Williams, Zaffirini.

Nay: Wentworth, Whitmire.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Barrientos, Gallegos, Wentworth, and Whitmire asked to be recorded as voting "Nay" on the final passage of **CSSB 319**.

(President in Chair)

MOTION TO PLACE
SENATE BILL 511 ON THIRD READING

Senator Nelson moved to suspend the regular order of business to take up for consideration **SB 511** at this time on its third reading and final passage:

SB 511, Relating to the adoption of a state scenic byways program.

The motion was lost by the following vote: Yeas 18, Nays 11. (Not receiving two-thirds vote of Members present)

Yea: Averitt, Bivins, Brimer, Carona, Deuell, Duncan, Estes, Hinojosa, Lindsay, Madla, Nelson, Ratliff, Shapiro, Shapleigh, Wentworth, Whitmire, Williams, Zaffirini.

Nay: Armbrister, Barrientos, Ellis, Gallegos, Harris, Jackson, Janek, Lucio, Ogden, Staples, Van de Putte, West.

Absent: Fraser, Janek.

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 146, SB 165, SB 197, SB 252, SB 285, SB 693, SB 1265, SB 1331, SB 1726, SB 1887, SB 1895, HB 292, HB 462, HB 887, HB 1460, HB 1701, HB 2940, HCR 50, HCR 53, HCR 127, HCR 160.

**SENATE RULE 2.02 SUSPENDED
(Restrictions on Admission)**

On motion of Senator Ellis and by unanimous consent, Senate Rule 2.02 was suspended to grant floor privileges to a member of the Sunset Advisory Commission staff during the deliberation of **CSSB 1952**.

**SENATE RULE 5.14(a) SUSPENDED
(Intent Calendar)**

Senator Armbrister moved to suspend Senate Rule 5.14(a) in order to extend the deadline to place bills on the Intent Calendar until 4:00 p.m. today.

The motion prevailed without objection.

**COMMITTEE SUBSTITUTE
SENATE BILL 1952 ON SECOND READING**

Senator Ellis moved to suspend the regular order of business to take up for consideration **CSSB 1952** at this time on its second reading:

CSSB 1952, Relating to the reorganization of, efficiency in, and other reform measures applying to state government.

The motion prevailed by a viva voce vote.

The bill was read second time.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 1952** (Senate committee printing), on page 2, between lines 39-40, by adding new subsection (h), to read as follows:

"(h) Non-profit, charitable and other community organizations may apply to use state parking lots and garages located in the city of Austin in the area bordered by West Fourth Street, Lavaca Street, West Third Street, and Nueces Street free of charge or at a reduced rate. The executive director shall develop a form to be used to make such applications. The form shall require information related to:

(1) the dates and times of the free use requested;

(2) the nature of the applicant's activities associated with the proposed use of state parking lots and garages; and

(3) any other information determined by the executive director to be necessary to evaluate an application.

(i) To be considered timely, an application must be submitted at least one month before the proposed use, unless this provision is waived by the executive director."

(j) The executive director may approve or reject an application made under subsection (h)."

The floor amendment was read and was adopted by a viva voce vote.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 1952** (committee printing) on page 2, line 40, by striking ARTICLE 4 and substituting new ARTICLE 4 as follows:

**ARTICLE 4. MANAGEMENT AND CONSTRUCTION OF
STATE AGENCY OFFICE SPACE**

SECTION 4.01. Section 2165.056(a), Government Code, is amended to read as follows:

(a) The commission may, at the request of the Texas Department of Transportation or the Texas Department of Criminal Justice, and shall for all other agencies [a state agency's request] exercise the powers and duties given to the commission by this subchapter and Subchapters A, D, E, and F, on or with respect to any property owned or leased by the state.

SECTION 4.02. Subchapter B, Chapter 2165, Government Code, is amended by adding Section 2165.057 to read as follows:

Sec. 2165.057. ANNUAL REPORT. Not later than September 1 of each year, the commission shall:

(1) issue a report on the amount of cost savings achieved by the commission through:

(A) the reduction of square footage of office and warehouse space leased;
(B) the efficient use of state-owned space;
(C) the renegotiation of leased space; and
(D) waivers granted in accordance with Section 2165.104(c-1); and

(2) provide a copy of a report under this section to:

(A) the governor;
(B) the lieutenant governor;
(C) the speaker of the house of representatives;
(D) the chairs of the Senate Finance Committee and the House Appropriations Committee; and
(E) the chairs of the Senate Administration Committee and the House Administration Committee.

SECTION 4.03. Section 2165.104, Government Code, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(c) The [To the extent possible without sacrificing critical public or client services, the] commission may not allocate usable office space, as defined by the commission, to a state agency under Article I, II, V, VI, VII, or VIII of the General Appropriations Act or to the Texas Higher Education Coordinating Board, the Texas Education Agency, the State Board for Educator Certification, the Telecommunications Infrastructure Fund Board, or the Office of Court Administration of the Texas Judicial System in an amount that exceeds an average of 153 square feet per agency employee for each agency site. [To the extent that any of those agencies allocates its own usable office space, as defined by the commission, the agency shall allocate the space to achieve the required ratio.] This subsection does not apply to:

(1) an agency site at which it is not practical to apply this subsection because of the site's type of space or use of space, as determined by the commission; or ~~[an agency site at which fewer than 16 employees are located]~~;

(2) For good cause and when critical to the public interest or client services, the commission may grant to an agency a waiver of the requirements under Subsection (c), warehouse space;

~~{(3)} laboratory space;~~

~~{(4)} storage space exceeding 1,000 gross square feet;~~

~~{(5)} library space;~~

~~{(6)} space for hearing rooms used to conduct hearings required under the administrative procedure law, Chapter 2001; or~~

~~{(7)} another type of space specified by commission rule, if the commission determines that it is not practical to apply this subsection to that space.~~

SECTION 4.04. The first report required under Section 2165.057, Government Code, as added by this Act, must be provided to the appropriate recipients specified under that section not later than September 1, 2004.

SECTION 4.05. The change in law made by Section 4.01 of this article applies only to a lease for usable office space entered into or renewed on or after September 1, 2003. A lease entered into or renewed before September 1, 2003, shall be reviewed by the Texas Building and Procurement Commission as the lease comes up for renewal to determine whether it would be cost-effective to bring the lease into compliance with Subsection (c), Section 2165.104, Government Code, as amended by this article.

SECTION 4.06. Notwithstanding any other law, including Subchapter A, Chapter 2254, and Chapters 2165, 2166, and 2167, Government Code, and Sections 202.052, 202.053, 203.051, 203.052, and 223.001, Transportation Code, the Texas Department of Transportation may enter into one or more agreements with a private entity offering the best value to the state that includes:

(1) both design and construction of the department's several district office headquarters facilities;

(2) a lease of department-owned real property to the private entity;

(3) provisions authorizing the private entity to construct and retain ownership of buildings on property leased to the private entity under Subdivision (2) of this section;

(4) provisions under which the department agrees to enter into an agreement to lease with an option or options to purchase for the buildings constructed on the leased property; and

(5) any other provisions the department considers advantageous to the state.

The floor amendment was read.

(Senator Carona in Chair)
(President in Chair)

Senator Staples offered the following amendment to the amendment:

Floor Amendment No. 2A

Amend Floor Amendment No. 2 to **CSSB 1952** on page 2, line 22 strike "153" and substitute "135 453".

The amendment to the amendment was read and failed of adoption by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 2, the amendment failed of adoption by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSSB 1952** as follows:

(1) In the heading to ARTICLE 4 of the bill (committee printing page 2, line 41), after "SPACE", insert "AND OTHER FACILITIES".

(2) In ARTICLE 4 of the bill, add new SECTIONs 4.01 and 4.02 (committee printing page 2, line 42) to read as follows:

SECTION 4.01. Subchapter A, Chapter 2165, Government Code, is amended by adding Section 2165.007 to read as follows:

Sec. 2165.007. FACILITIES MANAGEMENT SERVICES. (a) In this section, "facilities management services" means any state agency facilities management service that is not unique to carrying out a program of the agency. The term includes services related to facilities construction, facilities management, general building and grounds maintenance, cabling, and facility reconfiguration.

(b) Notwithstanding any other law, the commission shall provide facilities management services in relation to all state agency facilities in Travis County or a county adjacent to Travis County. The commission's duty does not apply to:

- (1) a facility owned or operated by an institution of higher education;
- (2) military facilities;
- (3) prison facilities;

(4) the Capitol, including the Capitol Extension, the General Land Office building, and any museum located on the Capitol grounds;

- (5) a facility determined by the commission to be completely residential; or
- (6) state agency facilities that serve as regional or field offices.

SECTION 4.02. Subchapter B, Chapter 2165, Government Code, is amended by adding Section 2165.057 to read as follows:

Sec. 2165.057. MANAGEMENT OF FACILITIES. (a) The commission shall develop and implement policies that clearly define the responsibilities of the commission and the commission's staff that relate to conducting facilities management services for state agency facilities under Section 2165.007.

(b) The state energy conservation office shall provide utility management services for state agency facilities for which the commission provides facilities management services under Section 2165.007.

(3) In ARTICLE 4 of the bill, add new SECTION 4.04 (committee printing page 3, between lines 2 and 3) to read as follows:

SECTION 4.04. On September 1, 2003:

(1) all powers and duties of a state agency that relate to the facilities management services treated by Subsection (b), Section 2165.007, Government Code, as added by this article, are transferred to the Texas Building and Procurement Commission or the state energy conservation office, as appropriate;

(2) all obligations and contracts of a state agency that relate to the transferred services are transferred to the Texas Building and Procurement Commission or the state energy conservation office, as appropriate;

(3) all records and other property in the custody of a state agency that relate to the transferred services and all funds appropriated by the legislature to a state agency that relate to the transferred services are transferred to the Texas Building and Procurement Commission or the state energy conservation office, as appropriate;

(4) all complaints and investigations that are pending before a state agency that relate to the transferred services are transferred without change in status to the Texas Building and Procurement Commission or the state energy conservation office, as appropriate; and

(5) a rule or form adopted by a state agency that relates to the transferred services is considered to be a rule or form of the Texas Building and Procurement Commission and remains in effect until altered by the commission or the state energy conservation office, as appropriate.

(4) In ARTICLE 4 of the bill, in existing SECTION 4.02 (committee printing page 3, line 3), strike "4.01" and substitute "4.03".

(5) Renumber the existing SECTIONs of ARTICLE 4 accordingly.

The floor amendment was read.

Senator Harris offered the following amendment to the amendment:

Floor Amendment No. 3A

Amend Floor Amendment No. 3 to **CSSB 1952** as follows:

On page 1, line 24, insert the following after "," and before "and": "the Bob Bullock Texas State History Museum."

The amendment to the amendment was read and was adopted by a viva voce vote.

Senator Whitmire offered the following amendment to the amendment:

Floor Amendment No. 3B

Amend Floor Amendment No. 3 to **CSSB 1952** as follows:

On page 1, line 22, delete subsection (3), insert the following new subsections, and renumber the subsequent subsections accordingly:

(3) facilities owned or operated by the Texas Department of Criminal Justice;

(4) facilities owned or operated by the Texas Youth Commission;

(5) facilities owned or operated by the Texas Department of Transportation;

The amendment to the amendment was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 3 as amended, the amendment as amended was adopted by a viva voce vote.

(Senator Fraser in Chair)

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 4

Amend **CSSB 1952** as follows:

(1) In ARTICLE 6 of the bill, strike SECTION 6.01 (committee printing page 4, lines 55 through 68) and substitute:

SECTION 6.01. Section 812.003, Government Code, is amended by amending Subsection (d) and adding Subsections (e) through (h) to read as follows:

(d) For persons whose employment or office holding begins on or after September 1, 2005, membership [Membership] in the employee class begins on the first day the [+] person is employed or holds office.

(e) For persons whose employment or office holding begins before September 1, 2005, membership in the employee class begins on the 91st day after the first day a person is employed or holds office.

(f) A person who is reemployed or who again holds office after withdrawing contributions under Subchapter B for previous service credited in the employee class begins membership in the employee class on the 91st day after the first day the person is reemployed or again holds office.

(g) Notwithstanding any other provision of law, a member may establish service credit only as provided by Section 813.514 for service performed during the 90-day waiting period provided by Subsection (e) or (f).

(h) Subsections (e), (f), and (g) and this subsection expire September 1, 2005.

(2) In SECTION 6.02 of the bill, in added Section 813.514, Government Code (page 5, lines 3 through 5), strike Subsection (a) and substitute:

(a) A member may establish service credit under this section in the employee class only for service performed during a 90-day waiting period to become a member after beginning employment or holding office.

(3) In ARTICLE 6 of the bill, strike SECTION 6.03 (committee printing page 5, lines 25 through 36) and substitute:

SECTION 6.03. Section 822.001, Government Code, is amended by adding Subsections (c) through (f) to read as follows:

(c) Membership in the retirement system begins on the 91st day after the first day a person is employed.

(d) A person who is reemployed after withdrawing contributions for previous service credit begins membership on the 91st day after the first day the person is reemployed.

(e) Notwithstanding any other provision of law, a member may establish credit only as provided by Section 823.406 for service performed during the 90-day waiting period provided by Subsection (c) or (d).

(f) Subsections (c), (d), and (e) and this subsection expire September 1, 2005.

(4) In ARTICLE 6 of the bill, add a new SECTION 6.04 (committee printing page 5, between lines 36 and 37) and renumber the subsequent SECTIONs accordingly:

SECTION 6.04. Section 823.002, Government Code, is amended to read as follows:

Sec. 823.002. SERVICE CREDITABLE IN A YEAR. (a) The board of trustees by rule shall determine how much service in any year is equivalent to one year of service credit, but in no case may all of a person's service in one school year be creditable as more than one year of service. Service that has been credited by the retirement system on annual statements for a period of five or more years may not be deleted or corrected because of an error in crediting unless the error concerns three or more years of service credit or was caused by fraud.

(b) The rules adopted by the board of trustees under Subsection (a) must provide that the 90-day waiting periods described by Sections 822.001(c) and (d) be applied with regard to contributions during a member's first year of service under either of those subsections in a manner that, to the greatest extent possible, minimizes the cost to the retirement system. This subsection expires September 1, 2005.

(5) In existing SECTION 6.04 of the bill, in Section 823.406, Government Code (committee printing page 5, lines 39 through 42), strike Subsection (a) and substitute:

(a) A member may establish membership service credit under this section only for service performed during a 90-day waiting period to become a member after beginning employment.

(6) In ARTICLE 6 of the bill, add SECTIONs 6.08 and 6.09 (committee printing page 6, between lines 5 and 6) to read as follows:

SECTION 6.08. The requirements of Subsection (b), Section 823.002, Government Code, as added by this article, apply to persons whose employment begins on or after the effective date of this article. The board of trustees of the Teacher Retirement System of Texas shall adopt rules implementing the requirements of that subsection as soon as practicable after the effective date of this article.

SECTION 6.09. This article takes effect July 1, 2003, if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this article takes effect September 1, 2003.

The floor amendment was read and was adopted by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 5

Amend **CSSB 1952** as follows:

On page 6, line 64, delete "September 1, 2004" and insert "March 1, 2004" in its place.

The floor amendment was read and was adopted by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 6

Amend **CSSB 1952** by adding the following SECTION in Article 8 and renumbering subsequent SECTIONS accordingly:

SECTION _____. Subchapter K, Chapter 659, Government Code, is amended by adding Section 659.262 to read as follows:

Sec. 659.262. ADDITIONAL COMPENSATION FOR CERTAIN CLASSIFIED STATE EMPLOYEES. (a) In this section, "state agency" means an agency of any branch of state government that employs individuals who are classified under Chapter 654.

(b) To enhance the recruitment of competent personnel for certain classified employee positions, a state agency may provide to a state employee, at the time of the employee's hiring for a classified position, additional compensation in the form of a one-time recruitment payment not to exceed \$5,000. If the employee discontinues employment with the state agency for any reason less than three months after the date of receiving the recruitment payment, the employee shall refund to the state agency the full amount of the recruitment payment. If the employee discontinues employment with the state agency for any reason three months or longer but less than 12 months after the date of receiving the recruitment payment, the employee shall refund to the state agency an amount computed by:

(1) subtracting from 12 months the number of complete calendar months the employee worked after the date of receiving the recruitment payment;

(2) dividing the number of months computed under Subdivision (1) by 12 months; and

(3) multiplying the fraction computed under Subdivision (2) by the amount of the recruitment payment.

(c) To enhance the retention of employees who are employed in certain classified positions that are identified by the chief administrator of a state agency as essential for the state agency's operations, a state agency may enter into a deferred compensation contract with a classified employee to provide to the employee a one-time additional compensation payment not to exceed \$5,000 to be added to the employee's salary payment the month after the conclusion of the 12-month period of service under the deferred compensation contract.

(d) To be eligible to enter into a contract for deferred compensation under Subsection (c), a state employee must have already completed at least 12 months of service in a classified position.

(e) The chief administrator of a state agency shall determine whether additional compensation is necessary under this section on a case-by-case basis, considering:

(1) the criticality of the employee position in the operations of the state agency;

(2) evidence of high turnover rates among employees filling the position or an extended period during which the position is or has in the past been vacant;

(3) evidence of a shortage of employees qualified to fill the position or a shortage of qualified applicants; and

(4) other relevant factors.

(f) Before an agency provides or enters into a contract to provide additional compensation to an employee under this section, the chief administrator of the state agency must certify to the comptroller in writing the reasons why the additional compensation is necessary.

(g) Additional compensation paid to an employee under this section is specifically exempted from any limitation on salary or salary increases prescribed by this chapter.

The floor amendment was read and was adopted by a viva voce vote.

Senator Brimer offered the following amendment to the bill:

Floor Amendment No. 7

Amend **CSSB 1952** in ARTICLE 10 of the bill, in added Subsection (c) of SECTION 10.04 (committee printing, page 9, line 2), by striking "\$23" and substituting "\$8".

The floor amendment was read and was adopted by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 8

Amend **CSSB 1952** (committee printing) as follows:

(1) In SECTION 14.01 page 10, line 23 add a new (b) to read as follows and renumber accordingly:

(b) For the purposes of this section an emergency is the occurrence of gross fiscal mismanagement or misappropriation of funds or a natural or man-made disaster.

(2) In SECTION 14.01 page 10, line 23 of the bill amend Section (b) as follows:

(c) (e) If the Governor determines After making a determination that an emergency exists, he shall the governor may submit to the Legislative Budget Board a plan that:

(3) In SECTION 14.01 page 10, line 25 of the bill strike the word "and".

(4) In SECTION 14.01 page 10, line 28 of the bill between the word "emergency" and the period add the following:

"; and"

(3) identifies changes in the budget or appropriation for the agency that are required as a result of the proposed changes in the organization and operations of the agency.

(5) In SECTION 14.01 page 10, line 29 of the bill amend (c) as follows:

(d) (e) If the Legislative Budget Board agrees with the governor's determination under Subsection (b), that an emergency exists, the Board may agree with the governor's proposed plan or may propose modifications in the plan submitted under Subsection (b). Upon agreement, the governor and the board may jointly issue an emergency order requiring the agency to implement the changes in its organization and operations as provided in the order.

The floor amendment was read and was adopted by a viva voce vote.

Senator Shapiro offered the following amendment to the bill:

Floor Amendment No. 9

Amend **CSSB 1952** (committee printed version) in the following manner:

Delete SECTION 18 of the bill on page 12, lines 7 through 30 and renumber the subsequent sections accordingly.

The floor amendment was read and was adopted by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 10

Amend **CSSB 1952** by striking ARTICLE 21 and adding a new ARTICLE 21 to read as follows:

**ARTICLE 21. JOINT INTERIM COMMITTEE ON
POSTCONVICTION EXONERATIONS**

SECTION 21.01. (a) The joint interim committee on postconviction exonerations is established to:

- (1) study the causes of and investigate wrongful criminal convictions;
- (2) identify appropriate improvements in the criminal justice system to prevent future wrongful convictions;
- (3) recommend policies, procedures, practices, and legislation needed to prevent future wrongful convictions; and
- (4) assess the procedures used by counties to ensure due process and suggest a statewide model for procedures ensuring due process.

(b) The interim committee is composed of the following nine members:

- (1) an attorney who represents the state in the prosecution of felonies, as appointed by the attorney general;
 - (2) two members of the criminal justice committee of the senate who are appointed by the lieutenant governor;
 - (3) two members of the criminal jurisprudence committee of the house of representatives who are appointed by the speaker of the house;
 - (4) a member of the judiciary who is appointed by the chief justice of the supreme court;
 - (5) two law professors who are appointed by the chancellor of The University of Texas System, one of whom works in the forensic science field; and
 - (6) a criminal defense attorney who is appointed by the Texas Criminal Defense Lawyers Association.
- (c) The lieutenant governor shall designate one of the members of the criminal justice committee of the senate appointed to the interim committee as described by Subsection (b) to serve as the chair of the interim committee.
- (d) The interim committee shall meet initially at the call of the chair of the interim committee, and the interim committee shall subsequently hold meetings and public hearings at the call of the chair. To the extent that it is financially possible, the interim committee shall hold public hearings in multiple locations across this state.

(e) The interim committee may issue process as provided by the senate and house of representatives rules of procedure and by Section 301.024, Government Code, and has all other powers and duties provided to special committees by the senate and house of representatives rules of procedure, by Subchapter B, Chapter 301, Government Code, and by policies of the committees on administration.

(f) From the contingent expense fund of the senate and the contingent expense fund of the house of representatives equally, the members of the interim committee shall be reimbursed for expenses incurred in carrying out the provisions of this Act in accordance with the senate and house of representatives rules of procedure and the policies of the committees on administration. Other necessary expenses of operation shall be paid from the contingent expense fund of the senate and the contingent expense fund of the house of representatives equally.

(g) Not later than October 1, 2004, the interim committee shall prepare and deliver to the governor, the lieutenant governor, and the speaker of the house of representatives copies of a report containing the interim committee's findings and recommendations.

SECTION 21.02. A person or association required to appoint a member to the joint interim committee on postconviction exonerations shall make the appointment not later than October 1, 2003.

The floor amendment was read and was adopted by a viva voce vote.

Senator Brimer offered the following amendment to the bill:

Floor Amendment No. 11

Amend **CSSB 1952**, in SECTION 22.02 of the bill, in added Section 481.078, Government Code (committee printing page 14, lines 24 through 27), by striking Subsection (e) and substituting:

(e) The governor may negotiate on behalf of the state to grant money from the fund and may only direct the use of money from the fund with the express written consent of the lieutenant governor and the speaker of the house of representatives.

The floor amendment was read and was adopted by a viva voce vote.

Floor Amendment No. 12 was not offered.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 13

Amend **CSSB 1952** by adding the following appropriately numbered ARTICLE to the bill and renumbering the subsequent ARTICLEs of the bill accordingly:

ARTICLE _____. TELECONFERENCE MEETING OF THE
LEGISLATIVE BUDGET BOARD

SECTION _____.01. Section 322.003, Government Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) As an exception to Chapter 551 and other law, if the chairman and vice-chairman of the board are physically present at a meeting, then any number of the other members of the board may attend a meeting of the board by use of telephone conference call, video conference call, or other similar telecommunication device. This subsection applies for purposes of constituting a quorum, for purposes of voting,

and for any other purpose allowing a member of the board to otherwise fully participate in any meeting of the board. This subsection applies without exception with regard to the subject of the meeting or topics considered by the members.

(e) A meeting held by use of telephone conference call, video conference call, or other similar telecommunication device:

- (1) is subject to the notice requirements applicable to other meetings;
- (2) must specify in the notice of the meeting the location of the meeting;
- (3) must be open to the public and shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting; and
- (4) must provide two-way audio communication between all parties attending the meeting during the entire meeting.

The floor amendment was read and was adopted by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 14

Amend **CSST 1952** by adding an appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLEs accordingly:

ARTICLE ____ . DISCLOSURE ON POLITICAL ADVERTISING

SECTION ____ .01. Section 251.001, Election Code, is amended by amending Subdivision (16) and adding Subdivision (21) to read as follows:

(16) "Political advertising" means a communication containing express advocacy relating to an election for [supporting or opposing a candidate for nomination or election to] a public office or office of a political party[, a political party, a public officer,] or a measure that:

(A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television or any other electronic transmission; or

(B) appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication.

(21) "Express advocacy" means a communication that advocates the election or defeat of a clearly identified candidate or officeholder or measure by containing the words or phrases: "vote for," "reelect," "support," "cast your ballot for," "(name of candidate) for (name of office)," "vote against," "defeat," or "reject."

SECTION ____ .02. Section 255.001, Election Code, is amended to read as follows:

Sec. 255.001. REQUIRED DISCLOSURE ON POLITICAL ADVERTISING.

(a) A person may not knowingly cause to be published, distributed, or broadcasted [enter into a contract or other agreement to print, publish, or broadcast] political advertising that does not indicate in the advertising:

- (1) that it is political advertising; and
- (2) the full name of:

(A) [either the individual who personally entered into the contract or agreement with the printer, publisher, or broadcaster or] the person who paid for the political advertising;

(B) the political committee authorizing the political advertising; or

(C) the full name of the candidate or specific-purpose committee supporting the candidate, if such political advertising is authorized by the candidate [that individual represents; and

[3) in the case of advertising that is printed or published, the address of either the individual who personally entered into the agreement with the printer or publisher or the person that individual represents].

(a-1) A person may not knowingly use, cause or permit to be used, or continue to use any printed, published, displayed, or broadcast political advertising that the person knows does not include the disclosure required by Subsection (a). A person is presumed to know that the use of political advertising is prohibited by this subsection if the commission notifies the person in writing that the use is prohibited. A person who learns that political advertising signs, as defined by Section 255.007, that have been distributed do not include the disclosure required by Subsection (a) or include a disclosure that does not comply with Subsection (a) does not commit a continuing violation of this subsection if the person makes a good faith attempt to remove or correct the signs. A person who learns that printed political advertising other than a political advertising sign that has been distributed does not include the disclosure required by Subsection (a) or includes a disclosure that does not comply with Subsection (a) is not required to attempt to recover the political advertising and does not commit a continuing violation of this subsection as to any previously distributed political advertising.

(b) This section does not apply to tickets or invitations to political fund-raising events or to campaign buttons, pins, hats, or similar campaign materials, or to circulars or flyers that cost in aggregate to publish and distribute less than \$2,500.

(c) A person who violates this section is liable to the state for a civil penalty that may be levied by the commission in its discretion in an amount not to exceed \$4,000 [commits an offense. An offense under this section is a Class A misdemeanor].

The floor amendment was read.

Senator Ellis offered the following amendment to the amendment.

Floor Amendment No. 14A

Amend Floor Amendment No. 14 to **CSSB 1952** as follows:

On page 3 of the floor amendment, line 13, delete "\$2,500" and insert "\$500" in its place.

The amendment to the amendment was read and was adopted by a viva voce vote.

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

Senator Hinojosa offered the following amendment to the bill:

Floor Amendment No. 15

Amend **CSSB 1952** by adding the following appropriately numbered article to the bill and renumbering the remaining articles of the bill as appropriate:

ARTICLE _____. TEXAS A&M UNIVERSITY-CORPUS CHRISTI
NATURAL RESOURCES CENTER

SECTION _____.01. Subchapter E, Chapter 87, Education Code, is amended by adding Section 87.403 to read as follows:

Sec. 87.403. CARLOS F. TRUAN NATURAL RESOURCES CENTER. The natural resources center located at Texas A&M University-Corpus Christi that was dedicated on August 6, 1996, shall be known as the Carlos F. Truan Natural Resources Center. The board shall take appropriate action to ensure that the center is identified as provided by this section.

The floor amendment was read and was adopted by a viva voce vote.

Floor Amendment No. 16 was not offered.

(Senator Armbrister in Chair)

Senator Fraser offered the following amendment to the bill:

Floor Amendment No. 17

Amend CSSB 1952 by adding a new article to read as follows and renumber existing articles accordingly:

ARTICLE _____. TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY PERMITTING AUTHORITY

SECTION 1. Section 382.0564, Health and Safety Code, is amended to read as follows:

(a) The commission by rule may allow for notification of and review by the administrator and affected states of permit applications, revisions, renewals, or draft permits prepared under Sections 382.054-382.0543.

(b) The commission shall mail notice of intent to obtain a permit, permit amendment, or other authorization for a rock-crushing facility associated with blasting operations to an affected municipality.

(c) An affected municipality entitled to notice under subsection (b) may submit comments to the commission within 30 days of receiving a notice of intent under subsection (b).

(d) The commission may not issue a permit, permit amendment, or other authorization for a rock-crushing facility associated with blasting operations if the commission receives from an affected municipality a resolution in opposition to issuance of the permit, permit amendment, or other authorization during the 30 day comment period.

(e) For purposes of this section, an "affected municipality" means a municipality whose primary source of drinking water is an aquifer made, wholly or partly, of water-bearing limestone or dolomite which is located in a county:

(1) that is adjacent to a county with a population of 500,000 or more; and

(2) in which is located a portion of a body of water into which a discharge of pollutants is prohibited by the commission under 30 T.A.C. Chapter 311.

The floor amendment was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Van de Putte asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 17.

Floor Amendment No. 18 was not offered.

Senator Van de Putte offered the following amendment to the bill:

Floor Amendment No. 19

Amend **CSSB 1952** by adding an appropriately numbered ARTICLE to read as follows and renumbering existing articles accordingly:

**ARTICLE ____ . CARRYING OF WEAPONS BY CERTAIN
OFFICERS AND INVESTIGATORS**

SECTION ____ .01. Section 46.15, Penal Code, is amended by amending Subsection (a) and adding Subsection (g) to read as follows:

(a) Sections 46.02 and 46.03 do not apply to:

(1) peace officers, including commissioned peace officers of a recognized state, or special investigators under Article 2.122, Code of Criminal Procedure, and neither section prohibits a peace officer or special investigator from carrying a weapon in this state, including in an establishment in this state serving the public, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon;

(2) parole officers and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) in compliance with policies and procedures adopted by the Texas Department of Criminal Justice regarding the possession of a weapon by an officer while on duty;

(3) community supervision and corrections department officers appointed or employed under Section 76.004, Government Code, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) authorized to carry a weapon under Section 76.0051, Government Code; or

(4) a judge or justice of the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code.

(g) In this section, "recognized state" means another state with which the attorney general of this state, with the approval of the governor of this state, negotiated an agreement after determining that the other state:

(1) has firearm proficiency requirements for peace officers; and

(2) fully recognizes the right of peace officers commissioned in this state to carry weapons in the other state.

SECTION ____ .02. The change in law made by this article applies only to an offense committed on or after September 1, 2003. An offense committed before September 1, 2003, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before September 1, 2003, if any element of the offense was committed before that date.

The floor amendment was read and was adopted by a viva voce vote.

Senator Barrientos, on behalf of Senator Duncan, offered the following amendment to the bill:

Floor Amendment No. 20

Amend **CSSB 1952** (Senate committee printing) by adding the following appropriately numbered article to the bill and renumbering the remaining articles of the bill as appropriate:

ARTICLE ____ . DESIGNATING THE POET LAUREATE,
STATE MUSICIAN, AND STATE ARTISTS

SECTION ____ . Section 1(d), Article 6139k, Revised Statutes, as added by Chapter 1412, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(d) The individuals designated as poet laureate, as state musician, and as state artists keep the designation for two years [~~one year~~] from the date of the designation ceremony.

SECTION ____ . Section 2, Article 6139k, Revised Statutes, as added by Chapter 1412, Acts of the 77th Legislature, Regular Session, 2001, is amended by amending Subsections (a), (b), and (d) and adding Subsections (e) and (f) to read as follows:

(a) The Texas poet laureate, state musician, and state artist committee consists of the following seven members:

- (1) one member of the public appointed by the governor;
- (2) two [~~three~~] members of the public appointed by the lieutenant governor;

[and]

- (3) one senator appointed by the lieutenant governor;

(4) two [~~three~~] members of the public appointed by the speaker of the house of representatives; and

(5) the chair of the house committee that has primary jurisdiction over arts and cultural matters.

(b) The [One member appointed by the speaker of the house of representatives must be the] chair of the house committee that has primary jurisdiction over arts and cultural matters [who] serves on the committee as an additional duty of the chairmanship.

(d) The member of the house of representatives on the committee serves as presiding officer of the committee. The presiding officer of the committee serves a two-year term that expires on October 1 of each odd-numbered year. [The members of the committee shall select a presiding officer from the members of the committee.]

(e) The committee shall meet in November of each even-numbered year to decide who to designate as the poet laureate, state musician, and state artists. In January of each odd-numbered year, the committee shall designate the poet laureate, state musician, and state artists.

(f) The presiding officer of the committee shall call the meetings of the committee.

SECTION _____. Section 3, Article 6139k, Revised Statutes, as added by Chapter 1412, Acts of the 77th Legislature, Regular Session, 2001, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) Not later than September 30 of each even-numbered year, the [The] Texas Commission on the Arts shall submit to the Texas poet laureate, state musician, and state artist committee a list of not more than 10 individuals who are worthy of being designated as the poet laureate, a list of not more than 10 individuals who are worthy of being designated as the state musician, a list of not more than 10 individuals who are worthy of being designated as the state artist for two-dimensional media, and a list of not more than 10 individuals who are worthy of being designated as the state artist for three-dimensional media.

(e) The commission shall adopt rules relating to the solicitation, acceptance, and processing of nominations for the poet laureate, state musician, and state artists under this section.

SECTION _____. Article 6139k, Revised Statutes, as added by Chapter 1412, Acts of the 77th Legislature, Regular Session, 2001, is amended by adding Section 5 to read as follows:

Sec. 5. RESOLUTION NAMING POET LAUREATE, STATE MUSICIAN, AND STATE ARTISTS. Not later than February 1 of each odd-numbered year, the presiding officer of the Texas poet laureate, state musician, and state artist committee shall draft a concurrent resolution for consideration by the legislature that acknowledges the naming of the poet laureate, state musician, and state artists.

SECTION _____. (a) This article takes effect October 1, 2003.

(b) On the effective date of this article, the term of each member of the Texas poet laureate, state musician, and state artist committee expires. As soon as practicable after the effective date of this article, the governor, lieutenant governor, and speaker of the house of representatives shall appoint the members of the Texas poet laureate, state musician, and state artist committee that meet the requirements of Section 2, Article 6139k, Revised Statutes, as added by Chapter 1412, Acts of the 77th Legislature, Regular Session, 2001, as amended by this article.

The floor amendment was read and was adopted by a viva voce vote.

(Senator Staples in Chair)

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 21

Amend **CSSB 1952** in ARTICLE 24 of the bill (committee printing, page 21, line 35) by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the ARTICLE accordingly:

SECTION 24. _____. (a) Chapter 32, Education Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. EDUCATION INTERNET PORTAL

Sec. 32.151. DEFINITION. In this subchapter, "portal" means the education Internet portal required by this subchapter.

Sec. 32.152. EDUCATION INTERNET PORTAL; GENERAL PURPOSES.

(a) The agency, with assistance from the Department of Information Resources and with participation by the Texas Higher Education Coordinating Board, interested school districts, and interested persons in the private sector, shall establish and maintain an education Internet portal for use by school districts, teachers, parents, and students.

(b) The portal must serve as a single point of access to educational resources. In addition to any other purpose specified by this subchapter or any other educational purpose, the portal may be used to:

(1) alleviate inequities in access to educational resources by providing access to on-line courses;

(2) improve student academic performance by providing access to tutorial materials, instructional materials that have been shown to improve academic performance, and other interactive materials, including materials that assess an individual student's knowledge and prepare the student for the administration of a standardized assessment instrument, including an assessment instrument administered under Section 39.023;

(3) provide school districts with access to administrative software and other electronic tools designed to promote administrative efficiency and intra-district communication;

(4) provide secure access to student assessment data; or

(5) provide links to appropriate educational resources and experts available through the Internet.

Sec. 32.153. ADMINISTRATION. (a) The agency has responsibility for general administration and oversight of the portal and for approving the content of all information made available through the portal.

(b) The Department of Information Resources shall:

(1) host the portal through the project known as TexasOnline;

(2) organize the portal in a manner that simplifies portal use and administration;

(3) provide any necessary technical advice to the agency, including advice relating to equipment required in connection with the portal;

(4) provide a method for maintaining the information made available through the portal; and

(5) cooperate with the agency in linking the agency's Internet site to the portal.

(c) The Department of Information Resources may assist the agency with technical advice regarding contracting with vendors for services in connection with the portal.

(d) The joint advisory committee established under Section 61.077, or any successor to that committee with advisory responsibility for coordination between secondary and postsecondary education, shall serve in an advisory capacity to the agency and the Department of Information Resources in connection with functions relating to the portal.

Sec. 32.154. ON-LINE COURSES. (a) The agency may coordinate the identification and development of on-line courses made available through the portal. A course may not be made available through the portal unless the course is reviewed by the agency and approved by the commissioner.

(b) In coordinating, developing, and reviewing courses to be made available through the portal, the agency shall give priority to any course that is not readily available to students throughout the state and for which there is a critical need.

(c) A course made available through the portal must be aligned with state curriculum requirements under Section 28.002 and the essential knowledge and skills identified under that section.

(d) The agency may develop quality assurance criteria to be used by the agency in developing and reviewing courses made available through the portal. The criteria must include components relating to:

- (1) course content;
- (2) instructor qualifications;
- (3) validity of assessment procedures;
- (4) security features; and
- (5) degree of interactivity.

Sec. 32.155. ON-LINE COURSE SCHOLARSHIPS. (a) Using funds available for that purpose, the agency may award a scholarship for the costs of an on-line course to a student who demonstrates that:

- (1) the student has inequitable access to the course; and
- (2) access to the course would improve the likelihood of the student's academic success.

(b) The commissioner may adopt criteria to be used in awarding scholarships under this section. The criteria must limit the availability of scholarships to students who:

- (1) are enrolled in a public school on a full-time basis; or
- (2) were enrolled in a public school on a full-time basis for at least three months during the preceding school year and indicate an intent to enroll in a public school on a full-time basis for at least three months during the school year for which the scholarship is offered.

Sec. 32.156. ON-LINE TEXTBOOKS. (a) The agency may develop and adopt strategies for making textbooks available through the portal or through other means in an electronic format as an alternative or supplement to traditional textbooks.

(b) In developing and adopting strategies under this section, the agency shall seek to achieve a system under which a student may, in addition to a traditional textbook, be provided with secure Internet access to each textbook used by the student.

Sec. 32.157. SCHOOL DISTRICT ADMINISTRATIVE SOFTWARE AND ELECTRONIC TOOLS. (a) The agency may:

(1) identify effective Internet-based administrative software and other electronic tools that may be used by school districts to improve district administrative functions; and

(2) pursue efforts to make that software and other electronic tools available through the portal for use by school districts on a voluntary basis.

(b) The agency may assist school districts in identifying sources of funding that may be used by districts to pay any costs associated with using administrative software and other electronic tools available through the portal. To the extent that funds are available to the agency, the agency may provide administrative software and other electronic tools through the portal at no cost to specific school districts selected by the agency based on demonstrated need.

Sec. 32.158. STUDENT ASSESSMENT DATA. (a) The agency may establish a secure, interoperable system to be implemented through the portal under which school districts can readily access student assessment data for use in developing strategies for improving student performance.

(b) In establishing the system required by this section, the agency shall seek to further the goal of providing school districts with access to student performance information at the classroom level.

Sec. 32.159. FEES. (a) The agency may charge school districts, teachers, parents, students, and other persons a reasonable fee for services or information provided through the portal.

(b) The total amount of fees charged under this section may not exceed the amount necessary to pay costs associated with the development, administration, and maintenance of the portal.

(c) An individual fee charged to a person under this section for a service or information may not exceed the amount that the person would be required to pay to obtain the service or information from a commercial source or through another means of access other than the portal.

(d) To the extent possible, the agency shall make services and information available through the portal at no cost to school districts, teachers, parents, students, and other persons.

Sec. 32.160. VENDOR PARTICIPATION. (a) The agency may seek proposals from private vendors for providing on-line courses or other materials or services through the portal in accordance with this subchapter. A vendor may not provide an on-line course or other material or service through the portal without approval by the agency.

(b) The agency may require a vendor, as a condition of approval of the vendor's proposal, to:

(1) pay:

(A) all or part of the costs of providing the on-line course or other material or service;

(B) an access fee to be used by the agency in paying the general costs of maintaining the portal; or

(C) both the amounts described by Paragraphs (A) and (B); and

(2) if applicable, provide on-line course scholarships to students in accordance with criteria adopted by the commissioner.

Sec. 32.161. FUNDING. (a) The agency may not use general revenue funds to pay the costs of developing, administering, and maintaining the portal. The agency may use amounts available to the agency from:

- (1) gifts, grants, or donations;
- (2) vendor payments described by Section 32.160(b); or
- (3) arrangements with nonprofit or private entities approved by the agency.

(b) To the extent possible considering other statutory requirements, the commissioner and agency shall encourage the use of textbook funds and technology allotment funds under Section 31.021(b)(2) in a manner that facilitates the development and use of the portal.

Sec. 32.162. STATEWIDE LICENSING AND CONTRACTING. As appropriate to promote the availability through the portal of services and information specified by this subchapter at no cost to users or at a reasonable cost, the agency may negotiate statewide licenses or discounts with software vendors and other persons offering applications that are suitable for use through the portal.

Sec. 32.163. OUTREACH AND TRAINING. (a) The agency may conduct outreach activities to provide information regarding the portal to school districts, teachers, parents, and students.

(b) The agency may provide training to school districts and teachers in use of the portal. Training in use of the portal may be made available to parents and students by the agency or school districts, as determined by commissioner rule.

(b) Not later than January 1, 2005, the Texas Education Agency shall submit a report to the legislature that contains recommendations for maximizing the benefits of providing access to textbooks or other educational materials through the Internet using the education Internet portal required by Subchapter D, Chapter 32, Education Code, as added by this section.

(c) The Texas Education Agency and the Department of Information Resources shall coordinate agency and department activities in implementing Subchapter D, Chapter 32, Education Code, as added by this section, with relevant ongoing activities relating to modification of the Public Education Information Management System (PEIMS) and other systems necessary to conform state educational reporting processes with educational reporting requirements imposed by federal law.

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. 22

Amend **CSSB 1952** (Senate committee printing) by adding appropriately numbered new **SECTIONS** to the bill and renumbering subsequent **SECTIONS** accordingly, to read as follows:

SECTION _____. Chapter 33, Education Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. SAFETY REGULATIONS FOR CERTAIN EXTRACURRICULAR ACTIVITIES

Sec. 33.101. APPLICABILITY. This subchapter applies to each public school in this state and to any other school in this state subject to University Interscholastic League regulations.

Sec. 33.102. SAFETY TRAINING REQUIRED. (a) The commissioner by rule shall develop and adopt a safety training program as provided by this section. In developing the program, the commissioner may use materials available from the American Red Cross or another appropriate entity.

(b) The following persons must satisfactorily complete the safety training program:

(1) a coach, trainer, or sponsor for an extracurricular athletic activity;

(2) except as provided by Subsection (f), a physician who is employed by a school or school district or who volunteers to assist with an extracurricular athletic activity; and

(3) a director responsible for a school marching band.

(c) The safety training program must include:

(1) certification of participants by the American Red Cross, the American Heart Association, or a similar organization, as determined by the commissioner;

(2) annual training in:

(A) emergency action planning;

(B) cardiopulmonary resuscitation if the person is not required to obtain certification under Section 33.086;

(C) communicating effectively with 9-1-1 emergency service operators and other emergency personnel; and

(D) recognizing symptoms of potentially catastrophic injuries, including head and neck injuries, concussions, injuries related to second impact syndrome, asthma attacks, heatstroke, cardiac arrest, and injuries requiring use of a defibrillator; and

(3) at least once each school year, a safety drill that incorporates the training described by Subdivision (2) and simulates various injuries described by Subdivision (2)(D).

(d) A student participating in an extracurricular athletic activity must receive training related to:

(1) recognizing the symptoms described by Subsection (c)(2)(D); and

(2) the risks of using supplements designed or marketed to enhance athletic performance.

(e) The safety training program and the training under Subsection (d) may each be conducted by a school or school district or by an organization described by Subsection (c)(1).

(f) A physician who is employed by a school or school district or who volunteers to assist with an extracurricular athletic activity is exempt from the requirements of Subsection (b) if the physician attends a continuing medical education course that specifically addresses emergency medicine for athletic team physicians.

Sec. 33.103. RECOMMENDATION RELATED TO HEART SCREENING. The University Interscholastic League shall recommend that each student participating in an extracurricular athletic activity receive a heart screening.

Sec. 33.104. CERTAIN UNSAFE ATHLETIC ACTIVITIES PROHIBITED. A coach, trainer, or sponsor for an extracurricular athletic activity may not encourage or permit a student participating in the activity to engage in any unreasonably dangerous athletic technique that unnecessarily endangers the health of a student, including using a helmet or any other sports equipment as a weapon.

Sec. 33.105. CERTAIN SAFETY PRECAUTIONS REQUIRED. (a) A coach, trainer, or sponsor for an extracurricular athletic activity shall at each athletic practice or competition ensure that:

(1) each student participating in the activity is permitted adequate access to water;

(2) any prescribed asthma medication for a student participating in the activity is readily available to the student;

(3) if available at the school, a defibrillator is readily accessible for use at the practice or competition;

(4) emergency lanes providing access to the practice or competition area are open and clear; and

(5) heatstroke prevention materials are readily available.

(b) A referee, umpire, or other official at an extracurricular athletic competition may prohibit a student from participating in the competition if:

(1) the official observes a violation of Subsection (a); or

(2) the official determines that the removal would likely prevent the death of or serious injury to the student.

(c) If a student participating in an extracurricular athletic activity, including a practice or competition, is rendered unconscious during the activity, the student may not:

(1) return to the practice or competition during which the student was rendered unconscious; or

(2) continue to participate in any extracurricular athletic activity until the student receives written authorization from a physician.

Sec. 33.106. COMPLIANCE; ENFORCEMENT. (a) On request, a school shall make available to the public proof of compliance for each person enrolled in, employed by, or volunteering for the school who is required to receive safety training described by Section 33.102.

(b) The superintendent of a school district or the director of a school subject to this subchapter shall maintain complete and accurate records of the district's or school's compliance with Section 33.102.

(c) A school campus that is determined by the school's superintendent or director to be in noncompliance with Section 33.102, 33.104, or 33.105 shall discontinue all extracurricular athletic activities offered by the school campus, including all practices and competitions, until the superintendent or director determines that the school campus is in compliance.

Sec. 33.107. CONTACT INFORMATION. (a) The commissioner shall maintain an existing telephone number and an electronic mail address to allow a person to report a violation of this subchapter.

(b) Each school that offers an extracurricular athletic activity shall prominently display at the administrative offices of the school the telephone number and electronic mail address maintained under Subsection (a).

Sec. 33.108. UNIVERSITY INTERSCHOLASTIC LEAGUE MEDICAL ADVISORY BOARD SUBCOMMITTEE. (a) The director of the University Interscholastic League shall appoint a subcommittee from among the membership of the league's medical advisory board. The director or the director's designee shall serve as the subcommittee's presiding officer.

(b) The subcommittee shall prepare a statement of the risks of injury resulting from participation in extracurricular athletic activities. The University Interscholastic League shall post the text of the statement on the league's Internet website and provide to each student participating in an extracurricular athletic activity and to the student's parent or guardian a copy of the statement.

Sec. 33.109. NOTICE REQUIRED. A school that offers an extracurricular athletic activity shall provide to each student participating in an extracurricular athletic activity and to the student's parent or guardian a copy of the text of Sections 33.101-33.108.

Sec. 33.110. INCORPORATION OF SAFETY REGULATIONS. The University Interscholastic League shall incorporate the provisions of Sections 33.103-33.108 into the league's constitution and contest rules.

SECTION _____. This Act takes effect September 1, 2003, and applies beginning with the 2004-2005 school year, except that Sections 33.104 and 33.108, Education Code, as added by this Act, apply beginning with the 2003-2004 school year.

The floor amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 23

Amend **CSSB 1952**, by adding the following sections and renumbering accordingly:

SECTION _____. Section 382.05101, Health and Safety Code, is amended to read as follows:

Sec. 382.05101. DE MINIMIS AIR CONTAMINANTS. The commission may develop by rule the criteria to establish a de minimis level of air contaminants for facilities or groups of facilities below which a permit under Section 382.0518 or 382.0519, a standard permit under Section 382.05195 or 382.05198, or a permit by rule under Section 382.05196 is not required.

SECTION _____. Subsection (c), Section 382.0511, Health and Safety Code, is amended to read as follows:

(c) The commission may authorize changes in a federal source to proceed before the owner or operator obtains a federal operating permit or revisions to a federal operating permit if:

- (1) the changes are de minimis under Section 382.05101; or
- (2) the owner or operator:

(A) has obtained a preconstruction permit or permit amendment required by Section 382.0518; or

(B) is operating under:

- (i) a standard permit under Section 382.05195 or 382.05198;
- (ii) [;] a permit by rule under Section 382.05196; [;] or
- (iii) an exemption allowed under Section 382.057.

SECTION _____. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Sections 382.05198 and 382.05199 to read as follows:

Sec. 382.05198. STANDARD PERMIT FOR CERTAIN CONCRETE PLANTS. (a) The commission shall issue a standard permit for a permanent concrete plant that performs wet batching, dry batching, or central mixing and that meets the following requirements:

(1) production records must be maintained on site while the plant is in operation until the second anniversary of the end of the period to which they relate;

(2) each cement or fly ash storage silo and weigh hopper must be equipped with a fabric or cartridge filter or vented to a fabric or cartridge filter system;

(3) each fabric or cartridge filter, fabric or cartridge filter system, and suction shroud must be maintained and operated properly with no tears or leaks;

(4) excluding the suction shroud filter system, each filter system must be designed to meet a standard of at least 0.01 outlet grain loading as measured in grains per dry standard cubic foot;

(5) each filter system and each mixer loading and batch truck loading emissions control device must meet a performance standard of no visible emissions exceeding 30 seconds in a five-minute period as determined using United States Environmental Protection Agency Test Method 22 as that method existed on September 1, 2003;

(6) if a cement or fly ash silo is filled during nondaylight hours, the silo filter system exhaust must be sufficiently illuminated to enable a determination of compliance with the performance standard described by Subdivision (5);

(7) the conveying system for the transfer of cement or fly ash to and from each storage silo must be totally enclosed, operate properly, and be maintained without any tears or leaks;

(8) except during cement or fly ash tanker connection or disconnection, each conveying system for the transfer of cement or fly ash must meet the performance standard described by Subdivision (5);

(9) a warning device must be installed on each bulk storage silo to alert the operator in sufficient time for the operator to stop loading operations before the silo is filled to a level that may adversely affect the pollution abatement equipment;

(10) if filling a silo results in failure of the pollution abatement system or failure to meet the performance standard described by Subdivision (5), the failure must be documented and reported to the commission;

(11) each road, parking lot, or other area at the plant site that is used by vehicles must be paved with a cohesive hard surface that is properly maintained, cleaned, and watered so as to minimize dust emissions;

(12) each stockpile must be sprinkled with water or dust-suppressant chemicals or covered so as to minimize dust emissions;

(13) material used in the batch that is spilled must be immediately cleaned up and contained or dampened so as to minimize dust emissions;

(14) production of concrete at the plant must not exceed 300 cubic yards per hour;

(15) a suction shroud or other pickup device must be installed at the batch drop point or, in the case of a central mix plant, at the drum feed and vented to a fabric or cartridge filter system with a minimum capacity of 5,000 cubic feet per minute of air;

(16) the bag filter and capture system must be properly designed to accommodate the increased flow from the suction shroud and achieve a control efficiency of at least 99.5 percent;

(17) the suction shroud baghouse exhaust must be located more than 100 feet from any property line;

(18) stationary equipment, stockpiles, and vehicles used at the plant, except for incidental traffic and vehicles as they enter and exit the site, must be located or operated more than 100 feet from any property line; and

(19) the central baghouse must be located at least 440 yards from any building used as a single or multifamily residence, school, or place of worship at the time the application to use the permit is filed with the commission if the plant is located in:

(A) an area that is not subject to municipal zoning regulations; and

(B) a county with a population of at least one million.

(b) Notwithstanding Subsection (a)(18), the commission shall issue a standard permit for a permanent concrete plant that performs wet batching, dry batching, or central mixing and does not meet the requirements of that subdivision if the plant meets the other requirements of Subsection (a) and:

(1) each road, parking lot, and other traffic area located within the distance of a property line provided by Subsection (a)(18) is bordered by dust-suppressing fencing or another barrier at least 12 feet high; and

(2) each stockpile located within the applicable distance of a property line is contained within a three-walled bunker that extends at least two feet above the top of the stockpile.

Sec. 382.05199. STANDARD PERMIT FOR CERTAIN CONCRETE BATCH PLANTS: NOTICE AND HEARING. (a) A person may not begin construction of a permanent concrete plant that performs wet batching, dry batching, or central mixing under a standard permit issued under Section 382.05198 unless the commission authorizes the person to use the permit as provided by this section. The notice and hearing requirements of Subsections (b)-(g) apply only to an applicant for authorization to use a standard permit issued under Section 382.05198. An applicant for a permit for a concrete plant that does not meet the requirements of a standard permit issued under Section 382.05198 must comply with:

(1) Section 382.058 to obtain authorization to use a standard permit issued under Section 382.05195 or a permit by rule adopted under Section 382.05196; or

(2) Section 382.056 to obtain a permit issued under Section 382.0518.

(b) An applicant for an authorization to use a standard permit under Section 382.05198 must publish notice under this section not later than the earlier of:

(1) the 30th day after the date the applicant receives written notice from the executive director that the application is technically complete; or

(2) the 75th day after the date the executive director receives the application.

(c) The applicant must publish notice at least once in a newspaper of general circulation in the municipality in which the plant is proposed to be located or in the municipality nearest to the proposed location of the plant. If the elementary or middle school nearest to the proposed plant provides a bilingual education program as required by Subchapter B, Chapter 29, Education Code, the applicant must also publish the notice at least once in an additional publication of general circulation in the municipality or county in which the plant is proposed to be located that is published in the language taught in the bilingual education program. This requirement is waived if such a publication does not exist or if the publisher refuses to publish the notice.

(d) The notice must include:

(1) a brief description of the proposed location and nature of the proposed plant;

(2) a description, including a telephone number, of the manner in which the executive director may be contacted for further information;

(3) a description, including a telephone number, of the manner in which the applicant may be contacted for further information;

(4) the location and hours of operation of the commission's regional office at which a copy of the application is available for review and copying; and

(5) a brief description of the public comment process, including the time and location of the public hearing, and the mailing address and deadline for filing written comments.

(e) The public comment period begins on the first date notice is published under Subsection (b) and extends to the close of the public hearing.

(f) Section 382.056 of this code and Chapter 2001, Government Code, do not apply to a public hearing held under this section. A public hearing held under this section is not an evidentiary proceeding. Any person may submit an oral or written statement concerning the application at the public hearing. The applicant may set reasonable limits on the time allowed for oral statements at the public hearing.

(g) The applicant, in cooperation with the executive director, must hold the public hearing not less than 30 days and not more than 45 days after the first date notice is published under Subsection (b). The public hearing must be held in the county in which the plant is proposed to be located.

(h) Not later than the 35th day after the date the public hearing is held, the executive director shall approve or deny the application for authorization to use the standard permit. The executive director shall base the decision on whether the application meets the requirements of Section 382.05198. The executive director shall consider all comments received during the public comment period and at the public hearing in determining whether to approve the application. If the executive director denies the application, the executive director shall state the reasons for the denial and any modifications to the application that are necessary for the proposed plant to qualify for the authorization.

(i) The executive director shall issue a written response to any public comments received related to the issuance of an authorization to use the standard permit at the same time as or as soon as practicable after the executive director grants or denies the application. Issuance of the response after the granting or denial of the application does not affect the validity of the executive director's decision to grant or deny the application. The executive director shall:

- (1) mail the response to each person who filed a comment; and
- (2) make the response available to the public.

The floor amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 24

Amend **CSSB 1952** by adding the following appropriately numbered ARTICLE and renumbering subsequent ARTICLES accordingly:

ARTICLE _____. TEXAS DEPARTMENT OF MENTAL HEALTH
AND MENTAL RETARDATION; VOLUNTARY
ADMISSION TO STATE SCHOOL

SECTION _____.01. Subchapter B, Chapter 593, Health and Safety Code, is amended by adding Section 593.0225 to read as follows:

Sec. 593.0225. CRITERIA FOR VOLUNTARY ADMISSION; WAITING LIST. (a) The board by rule shall provide that a state school shall admit any adult person with mental retardation for whom an application for voluntary admission is filed if:

(1) the state school has funded bed space for the person to be admitted for care; and

(2) the state school would provide the least restrictive environment appropriate to the person's care.

(b) Each state school shall maintain a waiting list of persons who desire voluntary admission to a state school and who were denied admission because of lack of bed space.

(c) The department shall ensure that persons seeking state services for a person with mental retardation are informed of the criteria established in rules adopted under Subsection (a), of the waiting list required by Subsection (b), and of the addresses and telephone numbers of each state school.

(d) The board may adopt rules to facilitate the application process for voluntary admission to a state school, the maintenance of the waiting list required by Subsection (b), and the provision of information as required by Subsection (c).

SECTION _____.02. The Texas Department of Mental Health and Mental Retardation shall ensure that persons on a waiting list maintained by a mental retardation authority for admission to a state school are informed of:

(1) criteria established in rules adopted under Section 593.0225, Health and Safety Code, as added by this article;

(2) the waiting lists required by that section; and

(3) the address and telephone number of each state school.

SECTION ____03. This article applies to an application for voluntary admission filed on or after September 1, 2003. An application for voluntary admission filed before that date is governed by the law in effect on the date the application was filed, and that law is continued in effect for that purpose.

The floor amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 25

Amend **CSSB 1952** by adding the following appropriately numbered SECTION to ARTICLE 30 of the bill and renumbering subsequent SECTIONS of that ARTICLE accordingly:

SECTION 30._____. Subchapter D, Chapter 371, Finance Code, is amended by adding Section 371.184 to read as follows:

Sec. 371.184. RESTRICTIONS ON TRANSACTIONS INVOLVING INTERESTED PARTIES. (a) In this section:

(1) "Controlling shareholder" means a shareholder or group of affiliated shareholders that owns 25 percent or more of the shares eligible to vote in any election of directors or other matters typically requiring shareholder approval.

(2) "Interested party" means, with respect to a corporation or other business entity:

- (A) a controlling shareholder;
- (B) a member of the board of directors or its equivalent;
- (C) an executive officer of the corporation or business entity;
- (D) a member of the immediate family of a controlling shareholder, director, or executive officer; or

(E) an affiliate of the corporation or other business entity, a controlling shareholder, director, or executive officer of an affiliate, or a member of the immediate family of a controlling shareholder, director, or executive officer of an affiliate.

(b) A corporation or other business entity that holds a license under this chapter and whose shares are publicly traded may not engage in a transaction with an interested party that, when aggregated with all transactions with that person or any other interested party during the corporation's fiscal year, involves a total of \$100,000 or more, unless that transaction receives prior approval of a majority of the holders of outstanding shares of the corporation's or other business entity's capital stock or its equivalent, including capital stock that is not otherwise entitled to vote, who are not interested parties, voting together as a single class of capital stock.

The floor amendment was read and was adopted by a viva voce vote.

RECORD OF VOTES

Senators Jackson and Janek asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 25.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 26

Amend **CSSB 1952** by inserting the following Section and renumbering accordingly:

PREVENTING AND DETECTING IDENTITY THEFT

SECTION _____. Section 20.01, Business & Commerce Code, is amended by adding Subdivisions (7) and (8) to read as follows:

(7) "Security alert" means a notice placed on a consumer file that alerts a recipient of a consumer report involving that consumer file that the consumer's identity may have been used without the consumer's consent to fraudulently obtain goods or services in the consumer's name.

(8) "Security freeze" means a notice placed on a consumer file that prohibits a consumer reporting agency from releasing a consumer report involving that consumer file without the express authorization of the consumer.

SECTION 2. Section 20.03, Business & Commerce Code, is amended by adding Subsection (d) to read as follows:

(d) Any written disclosure to a consumer by a consumer reporting agency under this chapter must include a written statement that explains in clear and simple language the consumer's rights under this chapter and includes:

- (1) the process for receiving a consumer report or consumer file;
- (2) the process for requesting or removing a security alert or freeze;
- (3) the toll-free telephone number for requesting a security alert;
- (4) applicable fees;
- (5) dispute procedures;
- (6) the process for correcting a consumer file or report; and
- (7) information on a consumer's right to bring an action in court or arbitrate a dispute.

SECTION 3. Chapter 20, Business & Commerce Code, is amended by adding Sections 20.031 through 20.038 to read as follows:

Sec. 20.031. REQUESTING SECURITY ALERT. On a request in writing or by telephone and with proper identification provided by a consumer, a consumer reporting agency shall place a security alert on the consumer's consumer file not later than 24 hours after the date the agency receives the request. The security alert must remain in effect for not less than 90 days after the date the agency places the security alert on the file. There is no limit on the number of security alerts a consumer may request. At the end of a 90-day security alert, on request in writing or by telephone and with proper identification provided by the consumer, the agency shall provide the consumer with a copy of the consumer's file. A consumer may include with the security alert request a telephone number to be used by persons to verify the consumer's identity before entering into a transaction with the consumer.

Sec. 20.032. NOTIFICATION OF SECURITY ALERT. A consumer reporting agency shall notify a person who requests a consumer report if a security alert is in effect for the consumer file involved in that report and include a verification telephone number for the consumer if the consumer has provided a number under Section 20.031.

Sec. 20.033. TOLL-FREE SECURITY ALERT REQUEST NUMBER. A consumer reporting agency shall maintain a toll-free telephone number that is answered at all times to accept security alert requests from consumers.

Sec. 20.034. REQUESTING SECURITY FREEZE. (a) On written request sent by certified mail that includes proper identification provided by a consumer, a consumer reporting agency shall place a security freeze on a consumer's consumer file not later than the fifth business day after the date the agency receives the request.

(b) On written request for a security freeze provided by a consumer under Subsection (a), a consumer reporting agency shall disclose to the consumer the process of placing, removing, and temporarily lifting a security freeze and the process for allowing access to information from the consumer's consumer file for a specific requester or period while the security freeze is in effect.

(c) A consumer reporting agency shall, not later than the 10th business day after the date the agency receives the request for a security freeze:

(1) send a written confirmation of the security freeze to the consumer; and

(2) provide the consumer with a unique personal identification number or password to be used by the consumer to authorize a removal or temporary lifting of the security freeze under Section 20.037.

Sec. 20.035. NOTIFICATION OF CHANGE. If a security freeze is in place, a consumer reporting agency shall notify the consumer in writing of a change in the consumer file to the consumer's name, date of birth, social security number, or address not later than 30 calendar days after the date the change is made. The agency shall send notification of a change of address to the new address and former address. This section does not require notice of an immaterial change, including a street abbreviation change or correction of a transposition of letters or misspelling of a word.

Sec. 20.036. NOTIFICATION OF SECURITY FREEZE. A consumer reporting agency shall notify a person who requests a consumer report if a security freeze is in effect for the consumer file involved in that report.

Sec. 20.037. REMOVAL OR TEMPORARY LIFTING OF SECURITY FREEZE. (a) On a request in writing or by telephone and with proper identification provided by a consumer, including the consumer's personal identification number or password provided under Section 20.034, a consumer reporting agency shall remove a security freeze not later than the third business day after the date the agency receives the request.

(b) On a request in writing or by telephone and with proper identification provided by a consumer, including the consumer's personal identification number or password provided under Section 20.034, a consumer reporting agency, not later than the third business day after the date the agency receives the request, shall temporarily lift the security freeze for:

(1) a certain properly designated period; or

(2) a certain properly identified requester.

(c) A consumer reporting agency may develop procedures involving the use of a telephone, a facsimile machine, the Internet, or another electronic medium to receive and process a request from a consumer under this section.

(d) A consumer reporting agency shall remove a security freeze placed on a consumer file if the security freeze was placed due to a material misrepresentation of fact by the consumer. The consumer reporting agency shall notify the consumer in writing before removing the security freeze under this subsection.

Sec. 20.038. EXEMPTION FROM SECURITY FREEZE. A security freeze does not apply to a consumer report provided to:

(1) a state or local governmental entity, including a law enforcement agency or court or private collection agency, if the entity, agency, or court is acting under a court order, warrant, subpoena, or administrative subpoena;

(2) a child support agency as defined by Section 101.004, Family Code, acting to investigate or collect child support payments or acting under Title IV-D of the Social Security Act (42 U.S.C. Section 651 et seq.);

(3) the Health and Human Services Commission acting under Section 531.102, Government Code;

(4) the comptroller acting to investigate or collect delinquent sales or franchise taxes;

(5) a tax assessor-collector acting to investigate or collect delinquent ad valorem taxes;

(6) a person for the purposes of prescreening as provided by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.);

(7) a person with whom the consumer has an account or contract or to whom the consumer has issued a negotiable instrument, or the person's subsidiary, affiliate, agent, assignee, or prospective assignee, for purposes related to that account, contract, or instrument;

(8) a subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under Section 20.037(b);

(9) a person who administers a credit file monitoring subscription service to which the consumer has subscribed; or

(10) a person for the purpose of providing a consumer with a copy of the consumer's report on the consumer's request.

SECTION 4. Section 20.04, Business & Commerce Code, is amended to read as follows:

Sec. 20.04. CHARGES FOR CERTAIN DISCLOSURES OR SERVICES. (a) Except as provided by Subsection (b), a consumer reporting agency may impose a reasonable charge on a consumer for the disclosure of information pertaining to the consumer or for placing a security freeze on a consumer file. The amount of the charge may not exceed \$8. On January 1 of each year, a consumer reporting agency may increase the charge for disclosure to a consumer or for placing a security freeze. The increase, if any, must be based proportionally on changes to the Consumer Price Index for All Urban Consumers as determined by the United States Department of Labor with fractional changes rounded to the nearest 50 cents.

(b) A consumer reporting agency may not charge a fee for:

(1) a request by a consumer for a copy of the consumer's file;

(A) made not later than the 60th day after the date on which adverse action is taken against the consumer; or

(B) made on the expiration of a 90-day security alert;

(2) notification of the deletion of information that is found to be inaccurate or can no longer be verified sent to a person designated by the consumer, as prescribed by Section 611 of the Fair Credit Reporting Act (15 U.S.C. Section 1681i), as amended;

(3) a set of instructions for understanding the information presented on the consumer report; [or]

(4) a toll-free telephone number that consumers may call to obtain additional assistance concerning the consumer report or to request a security alert;

(5) a request for a security freeze made by a consumer who has submitted to the consumer reporting agency a copy of a valid police report, investigative report, or complaint made under Section 32.51, Penal Code; or

(6) a request for a security alert made by a consumer.

SECTION 5. Chapter 20, Business & Commerce Code, is amended by adding Sections 20.11 and 20.12 to read as follows:

Sec. 20.11. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The attorney general may file a suit against a person for:

(1) injunctive relief to prevent or restrain a violation of this chapter; or

(2) a civil penalty in an amount not to exceed \$2,000 for each violation of this chapter.

(b) If the attorney general brings an action against a person under Subsection (a) and an injunction is granted against the person or the person is found liable for a civil penalty, the attorney general may recover reasonable expenses, court costs, investigative costs, and attorney's fees.

(c) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section.

Sec. 20.12. DECEPTIVE TRADE PRACTICE. A violation of this chapter is a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17.

SECTION 6. Subchapter D, Chapter 35, Business & Commerce Code, is amended by adding Section 35.58 to read as follows:

Sec. 35.58. CONFIDENTIALITY OF SOCIAL SECURITY NUMBER. (a) A person, other than government or a governmental subdivision or agency, may not:

(1) intentionally communicate or otherwise make available to the public an individual's social security number;

(2) display an individual's social security number on a card or other device required to access a product or service provided by the person;

(3) require an individual to transmit the individual's social security number over the Internet unless the connection with the Internet is secure or the number is encrypted;

(4) require an individual's social security number for access to an Internet website, unless a password or unique personal identification number or other authentication device is also required for access; or

(5) print an individual's social security number on any materials, other than a form or application, that are sent by mail, unless state or federal law requires that the individual's social security number be included in the materials.

(b) A person that is using an individual's social security number before January 1, 2004, in a manner prohibited by Subsection (a) may continue that use if:

(1) the use is continuous; and

(2) the person provides annual disclosure to the individual stating that on written request from the individual the person will cease to use the individual's social security number in a manner prohibited by Subsection (a).

(c) A person, other than government or a governmental subdivision or agency, may not deny services to an individual because the individual makes a written request under Subsection (b).

(d) This section does not apply to:

(1) the collection, use, or release of a social security number that is required by state or federal law, including Chapter 552, Government Code; or

(2) the use of a social security number for internal verification or administrative purposes.

SECTION 7. Subchapter D, Chapter 35, Business & Commerce Code, is amended by adding Section 35.59 to read as follows:

Sec. 35.59. VERIFICATION OF CONSUMER IDENTITY. (a) In this section:

(1) "Consumer report" has the meaning assigned by Section 20.01.

(2) "Extension of credit" does not include an increase in the dollar limit of an existing open-end credit plan as defined by Regulation Z (12 C.F.R. Section 226.2), as amended, or any change to, or review of, an existing credit account.

(3) "Security alert" has the meaning assigned by Section 20.01.

(b) A person who receives notification of a security alert under Section 20.032 in connection with a request for a consumer report for the approval of a credit-based application, including an application for an extension of credit, a purchase, lease, or rental agreement for goods, or for an application for a noncredit-related service, may not lend money, extend credit, or authorize an application without taking reasonable steps to verify the consumer's identity.

(c) If a consumer has included with a security alert a specified telephone number to be used for identity verification purposes, a person who receives that number with a security alert must take reasonable steps to contact the consumer using that number before lending money, extending credit, or completing any purchase, lease, or rental of goods, or approving any noncredit-related services.

(d) If a person uses a consumer report to facilitate the extension of credit or for any other transaction on behalf of a subsidiary, affiliate, agent, assignee, or prospective assignee, that person, rather than the subsidiary, affiliate, agent, assignee, or prospective assignee, may verify the consumer's identity.

SECTION 8. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2003.

(b) Section 35.58, Business & Commerce Code, as added by this Act, takes effect January 1, 2004.

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. 27

Amend **CSSB 1952** by adding the following appropriately numbered new SECTION to the bill and renumbering subsequent SECTIONS accordingly, to read as follows:

SECTION _____. Chapter 2113, Government Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. RESTRICTIONS ON CAPITAL EXPENDITURES**Sec. 2113.301. PREFERENCE FOR FINANCING CERTAIN CAPITAL EXPENDITURES WITH MONEY GENERATED BY UTILITY COST SAVINGS CONTRACT.** (a) In this section:

(1) "State facility purpose" means a purpose related to:

(A) the maintenance of a state-owned or state-leased building or facility, if such maintenance involves the purchase, repair, or rehabilitation of any device at the building or facility or of the building or facility itself, if such action will result in a cost of \$5,000.00 or more; or

(B) a project as defined by Section 2166.001, including a project described by Section 2166.003.

(2) "Utility cost savings contract" means a contract under Subchapter I, Chapter 2166, or other law that guarantees utility cost savings for energy conservation measures to reduce energy or water consumption or to reduce operating costs of governmental facilities.

(b) Before a state agency may use appropriated money to make a capital expenditure for a state facility purpose, the state agency must determine whether the expenditure could be financed with money generated by a utility cost savings contract.

(c) If it is practicable to do so, a state agency that is using appropriated money must finance a capital expenditure for a state facility purpose with money generated by a utility cost savings contract.

(d) If it is not practicable for a state agency that is using appropriated money to finance a capital expenditure for a state facility purpose with money generated by a utility cost savings contract, the state agency must provide justification to the Legislative Budget Board for the capital expenditure.

(e) In determining under Subsection (b) whether a capital expenditure could be financed by a utility cost savings contract, a state agency must consider whether utility cost savings generated by any department of that agency could be a potential means of financing a capital expenditure for any department of that agency. Money generated by a utility cost savings in one department of a state agency may be used to finance capital expenditures for a state facility purpose in any department of that agency.

The floor amendment was read.

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

Floor Amendment No. 28 was not offered.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 29

Amend **CSSB 1952** by adding the following appropriately numbered article to the bill and renumbering remaining articles of the bill as appropriate:

ARTICLE _____. FUEL SAVINGS FOR STATE AGENCIES

SECTION _____.01. Chapter 447, Government Code, as amended by Chapters 573, 1158, and 1398, Acts of the 77th Legislature, Regular Session, 2001, is amended by adding Sections 447.012 and 447.013 to read as follows:

Sec. 447.012. FUEL SAVINGS FOR STATE AGENCIES. (a) In this section and in Section 447.013:

(1) "Cost-effective" means resulting in fuel consumption reduction with a projected savings in fuel cost over a one-year period that exceeds the cost of purchasing and using a technology.

(2) "Fuel-saving technology" means a:

(A) device containing no lead metal that is installed on a motor vehicle or non-road diesel and that has been proven to reduce fuel consumption per mile or per hour of operation by at least five percent;

(B) fuel additive registered in accordance with 40 C.F.R. Part 79 that contains no known mutagenic materials and that has been proven to reduce fuel consumption per mile or per hour of operation by at least five percent; or

(C) fuel registered in accordance with 40 C.F.R. Part 79 that contains no known mutagenic materials and that has been proven to reduce fuel consumption per mile or per hour of operation by at least five percent.

(3) "Motor vehicle" and "non-road diesel" have the meanings assigned by Section 386.101, Health and Safety Code.

(4) "Proven fuel-saving technologies" means technologies shown to reduce fuel use by at least five percent in:

(A) an Environmental Protection Agency fuel economy federal test protocol test performed at a laboratory recognized by the Environmental Protection Agency;

(B) a fuel economy test performed in accordance with protocols and at testing laboratories or facilities recognized by the state energy conservation office, the Texas Commission on Environmental Quality, or the Environmental Protection Agency; or

(C) a field demonstration performed in accordance with Section 447.013.

(b) A state agency with 10 or more motor vehicles or non-road diesels shall reduce the total fuel consumption of the vehicles or diesels by at least five percent from fiscal year 2002 consumption levels through the use of cost-effective fuel-saving technologies.

(c) A state agency may delay reducing fuel use as described in this section until a list of proven fuel-saving technologies is provided by the state energy conservation office as provided by Section 447.013.

(d) A state agency may not purchase or use as a fuel-saving technology a technology that:

(1) is known to increase oxides of nitrogen emissions or toxic air contaminants; or

(2) may be reasonably concluded to degrade air quality or human health or to negatively impact the environment.

(e) A state agency may purchase cost-effective fuel-saving technologies out of the agency's fuel budget.

(f) A state agency shall competitively evaluate similar fuel-saving technologies.

(g) A state agency may require a seller of a fuel-saving technology to refund the cost of the technology if it is determined to be ineffective at reducing fuel use by at least five percent before the 91st day after the date the technology is first used by the agency.

(h) A state agency may use fuel-saving technologies that the agency determines are cost-effective and may use a fuel-saving technology in applications that provide other benefits, including emissions reductions.

- (i) A state agency may establish a program for agency employees to voluntarily:
(1) purchase fuel-saving technologies; and
(2) document reductions in fuel savings and air emissions.

(j) A state agency shall annually report to the state energy conservation office on a form provided by the office on the state agency's efforts and progress under this section.

Sec. 447.013. FIELD DEMONSTRATIONS. (a) Under the direction of the state energy conservation office, the Texas Department of Transportation shall demonstrate the effectiveness of at least four fuel-saving technologies on a combined maximum of 100 motor vehicles or non-road diesels in accordance with this section to determine the fuel-saving technologies that may cost-effectively reduce fuel consumption and save state revenue.

(b) Varying ages and types of motor vehicles and non-road diesels shall be selected to demonstrate the fuel-saving technologies. Preference shall be given to high-use motor vehicles and non-road diesels in the selection.

(c) The Texas Department of Transportation shall demonstrate the performance of fuel-saving technologies by:

(1) assessing a technology's performance in the normal course of operations of motor vehicles or non-road diesels; and

(2) performing controlled field tests.

(d) In selecting the technologies to be evaluated, the state energy conservation office shall:

(1) consult with governmental and business organizations that are currently using fuel-saving technology;

(2) consider technologies that are proven fuel-saving technologies that have demonstrated fuel economy benefits of five percent or more in field tests or recorded use data of government organizations or businesses that operate fleets; and

(3) determine whether each technology selected has the potential to be cost-effective.

(e) A fuel-saving technology may be disqualified from being demonstrated or used if it is known to reduce engine performance, reduce the life of the engine, require additional maintenance expenses, or degrade air quality.

(f) The Texas Council on Environmental Technology, The University of Texas Center for Transportation Research, the University of Houston Diesel Emissions Center, or another agency may be designated to assist with executing the demonstration, compiling the results, estimating the potential average fuel savings of the technologies in different applications, or preparing a final report.

(g) On completing the demonstration described by this section the state energy conservation office shall rank the fuel-saving technologies based on their fuel savings, other cost savings, and overall cost-effectiveness. The office shall:

- (1) list recommended applications of the technologies;
(2) document other negative or positive effects; and
(3) prepare a concise report of these findings.

(h) The Texas Council on Environmental Technology shall obtain information on any fuel-saving technology that appears to reduce particulate matter, oxides of nitrogen, carbon monoxide, or hydrocarbon emissions. The Texas Council on Environmental Technology may use this information to fund the Environmental Protection Agency verification of a technology in accordance with Section 387.003, Health and Safety Code.

(i) The state energy conservation office shall provide the report prepared under Subsection (g) to each state agency with 10 or more motor vehicles or non-road diesels and to the Legislative Budget Board.

(j) The demonstration and associated reports described by this section shall be completed not later than September 1, 2004.

(k) All results of a demonstration project under this section shall be made public on the state energy conservation office's Internet website.

(l) The state energy conservation office shall provide quarterly an updated list of all proven fuel-saving technologies on its Internet website.

(m) Money from the state highway fund may not be used for the purchase, installation, maintenance, or operation of the fuel-saving technologies being assessed or subjected to controlled field tests under this section. Repairs to state equipment resulting from demonstrations of fuel-saving technologies must be paid from the same funds used to implement this section.

The floor amendment was read.

On motion of Senator Shapleigh, Floor Amendment No. 29 was withdrawn.

Senator Van de Putte offered the following amendment to the bill:

Floor Amendment No. 30

Amend **CSSB 1952** by adding the following appropriately numbered ARTICLE and renumbering subsequent ARTICLES of the bill accordingly:

**ARTICLE ____ ECONOMIC IMPACT OF
LOTTERY CONTRACTS**

SECTION ____ .01. Section 466.101, Government Code, is amended by adding Subsections (f) through (i) to read as follows:

(f) In awarding a contract under this chapter or evaluating a bid or proposal relating to a contract, the executive director may consider a vendor's economic impact to the state or a political subdivision of the state.

(g) For contracts for which the executive director will consider a vendor's economic impact under Subsection (f), the commission by rule shall prescribe:

(1) the type of documentation a vendor must submit to demonstrate the vendor's potential economic impact; and

(2) the manner and methodology by which the executive director will evaluate a vendor's economic impact.

(h) The methodology developed under Subsection (g) to determine a vendor's economic impact to this state or a political subdivision of this state is subject to audit by the state auditor based on a risk assessment performed by the state auditor and subject to the legislative audit committee's approval for inclusion of the work in the audit plan under Section 321.013(c).

(i) In this section, "economic impact" means the number of:

(1) current employees in this state and the amount of wages being paid to those employees, including any subcontractor's employees and wages; and

(2) full-time equivalent positions to be created in this state and the additional amount of wages to be paid to employees in this state as a result of awarding a contract, including a proposed subcontractor's employees and wages.

The floor amendment was read and was adopted by a viva voce vote.

Floor Amendment No. 31 was temporarily not offered.

Senator Ellis, on behalf of Senator Zaffirini, offered the following amendment to the bill:

Floor Amendment No. 32

Amend **CSSB 1952** beginning on page 6, line 48, as follows:

ARTICLE 8. AGENCY STAFFING AND PRODUCTIVITY

SECTION 8.01. Effective September 1, 2003, Section 651.004, Government Code, is amended by adding Subsections (c-1) and (d) to read as follows:

(c-1) state agency in the executive branch of state government that employs more than 100 full-time equivalent employees may not, after August 31, 2004, employ more than one full-time equivalent employee in a management position for every eight full-time equivalent employees that the agency employs in nonmanagerial staff positions[-] , unless the nonmanagerial staff positions are classified as protective service specialists. This subsection expires September 1, 2005.

(d) state agency that believes that the minimum management-to-staff ratios required by this section are inappropriate for that agency may appeal to the Legislative Budget Board. The Legislative Budget Board by rule shall adopt appeal procedures.

SECTION 8.02. Effective September 1, 2004, Section 651.004, Government Code, is amended by adding Subsection (c-2) to read as follows:

(c-2) state agency in the executive branch of state government that employs more than 100 full-time equivalent employees may not, after August 31, 2005, employ more than one full-time equivalent employee in a management position for every nine full-time equivalent employees that the agency employs in nonmanagerial staff positions[-] , unless the nonmanagerial staff positions are classified as protective service specialists. This subsection expires September 1, 2006.

SECTION 8.03. Effective September 1, 2005, Section 651.004, Government Code, is amended by adding Subsection (c-3) to read as follows:

(c-3) state agency in the executive branch of state government that employs more than 100 full-time equivalent employees may not, after August 31, 2006, employ more than one full-time equivalent employee in a management position for every 10 full-time equivalent employees that the agency employs in nonmanagerial staff positions[-] , unless the nonmanagerial staff positions are classified as protective service specialists. This subsection expires September 1, 2007.

SECTION 8.04. (a) Effective September 1, 2006, Section 651.004, Government Code, is amended by adding Subsection (c) to read as follows:

(c) state agency in the executive branch of state government that employs more than 100 full-time equivalent employees may not employ more than one full-time equivalent employee in a management position for every 11 full-time equivalent employees that the agency employs in nonmanagerial staff positions[.] , unless the nonmanagerial staff positions are classified as protective service specialists.

(b) state agency in the executive branch of government shall achieve the management-to-staff ratio required by Subsection (c), Section 651.004, Government Code, as added by this section, not later than August 31, 2007.

SECTION 8.05. Subsection (b), Section 656.048, Government Code, is repealed.

The floor amendment was read.

On motion of Senator Ellis, on behalf of Senator Zaffirini, Floor Amendment No. 32 was withdrawn.

Senator Ellis, on behalf of Senator Zaffirini, offered the following amendment to the bill:

Floor Amendment No. 33

Amend **CSSB 1952** on page 26, line 55, by adding the following SECTION 25.05 to ARTICLE 25 of the bill and renumbering the other SECTIONS of ARTICLE 25 of the bill appropriately:

SECTION 25.05. Subdivision (2), Subsection (a), Section 1372.037, Government Code, is amended to read as follows:

(2) \$50 million, if the issuer is an issuer of a state-voted issue, other than the Texas Higher Education Coordinating Board, or \$125 [\$75] million, if the issuer is the Texas Higher Education Coordinating Board;

The floor amendment was read and was adopted by a viva voce vote.

Floor Amendment No. 34 was not offered.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 34A

Amend **CSSB 1952** in SECTION 7.01 by striking Section 670.001, Government Code (committee printing page 6, lines 10-16) and substitute the following:

"Sec. 670.001. DEFINITIONS. In this chapter:

(1) "Human resources employee" does not include an employee whose primary job function is enforcement of Title VI or Title VII of the Civil Rights Act of 1964.

(2) "State agency" means a department, commission, board, office, authority, council, or other governmental entity in the executive branch of government that is created by the constitution or a statute of this state and has authority not limited to a geographical portion of the state. The term does not include a university system or institution of higher education as defined by Section 61.003, Education Code."

The floor amendment was read and was adopted by a viva voce vote.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 35

Amend **CSSB 1952** by adding the following new SECTION and renumbering subsequent SECTIONS accordingly:

SECTION _____. Section 651.001, Government Code, is amended to read as follows:

Sec. 651.001. Definition. (a) In any state statute, "officer" means an officer of this state unless otherwise expressly provided.

(b) "Management position" means a position where more than thirty-three percent of the duties of the position are management duties, including supervision.

The floor amendment was read.

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

AT EASE

The Presiding Officer, Senator Staples in Chair, at 3:45 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

IN LEGISLATIVE SESSION

Senator Armbrister at 4:05 p.m. called the Senate to order as In Legislative Session.

(President in Chair)

Senator Estes offered the following amendment to the bill:

Floor Amendment No. 36

Amend **CSSB 1952** by adding the following appropriately numbered ARTICLE to the bill and renumbering existing ARTICLES accordingly:

ARTICLE _____. LICENSE PLATES

SECTION _____.01. Subchapter A, Chapter 502, Transportation Code, is amended by adding Section 502.010 to read as follows:

Sec. 502.010. ISSUANCE AND DISPLAY OF LICENSE PLATE FOR CERTAIN VEHICLES. (a) This section applies only to a vehicle that is owned by this state or a political subdivision of this state, other than a law enforcement vehicle that:

(1) is registered under Section 502.206; or

(2) is not registered under Section 502.206, but is intended for use in covert criminal investigations, as designated in the application for registration.

(b) Notwithstanding anything in this chapter to the contrary, including Section 502.180, the department shall issue only one license plate for attachment at the rear of a vehicle to which this section applies.

(c) Notwithstanding anything in this chapter to the contrary, including Section 502.404(a), a person is entitled to operate on a public highway a vehicle to which this section applies that displays only one license plate if the plate is attached at the rear of the vehicle.

(d) In any provision of this chapter that relates to the issuance or display of "license plates," "plates," or a "set of plates," for a vehicle to which this section applies, the term means only one license plate.

The floor amendment was read and was adopted by a viva voce vote.

Senator Ellis, on behalf of Senator Duncan, offered the following amendment to the bill:

Floor Amendment No. 37

Amend **CSSB 1952** in Article 24 of the bill (committee report, page 21, beginning on line 35), by inserting the following new section, appropriately numbered, and renumbering subsequent sections of Article 24 accordingly:

SECTION 24. (a) Chapter 38, Education Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. CARE OF STUDENTS WITH DIABETES

Sec. 38.101. DEFINITIONS. In this subchapter:

(1) "Individual health care plan" means the document required by Section 38.102.
(2) "School" means an elementary or secondary school of an independent school district.

(3) "School employee" means a person employed by:
(A) a school;
(B) a local health department that assists a school under this subchapter; or
(C) another entity with which a school has contracted to perform its duties under this subchapter.

(4) "Trained diabetes care assistant" means a school employee who has completed the training required by Section 38.103.

Sec. 38.102. INDIVIDUAL HEALTH CARE PLAN. (a) An individual health care plan must be developed for each student with diabetes who will seek care for the student's diabetes while at school. The plan shall be developed by:

(1) the student's parent or guardian; and
(2) the student's personal health care team, which should include the student's physician.
(b) An individual health care plan must:
(1) identify the health care services the student may receive at school; and
(2) be signed by the student's parent or guardian and the student's personal health care team.

(c) The parent or guardian of a student with diabetes who seeks care for the student's diabetes while the student is at school shall submit to the school a copy of the student's individual health care plan. The plan must be submitted to and reviewed by the school:

(1) before the beginning of the school year;
(2) on enrollment of the student, if the student enrolls in the school after the beginning of the school year; or
(3) as soon as practicable following a diagnosis of diabetes for the student.

Sec. 38.103. TRAINED DIABETES CARE ASSISTANT. (a) The Texas Diabetes Council shall develop, with the assistance of the following entities, guidelines for the training of school employees in the care of students with diabetes:

- (1) the School Health Program of the Texas Department of Health;
- (2) the American Diabetes Association;
- (3) the Juvenile Diabetes Research Foundation International;
- (4) the American Association of Diabetes Educators;
- (5) the agency; and
- (6) the Texas School Nurses Organization.

(b) A school employee is not required to be a health care professional to be designated as a trained diabetes care assistant. The board of trustees of a school district may not require a school employee to serve as a trained diabetes care assistant.

(c) If a school nurse is assigned to a campus:

(1) the school nurse may be recognized as a trained diabetes care assistant at that campus; or

(2) the school nurse may supervise one or more other school employees acting as trained diabetes care assistants.

(d) A school nurse may be recognized as a trained diabetes care assistant without completing the training under this section if:

- (1) the nurse is a registered nurse; and
- (2) the nurse has received formal advanced training in diabetes care as part of the nurse's continuing education.

(e) If a school nurse is not assigned to a campus:

(1) each trained diabetes care assistant must have access, for emergency or informational assistance, to an individual who has expertise in the care of persons with diabetes, such as a physician, registered nurse, certified dietitian educator, or licensed dietitian; or

(2) the school must have access to a licensed health care professional who is a member of the student's personal health care team.

(f) Training under this section must be provided annually by a health care professional with expertise in the care of persons with diabetes. The training must be provided before the beginning of the school year or as soon as practicable following:

(1) the enrollment of a student with diabetes at a campus that previously had no students with diabetes; or

(2) a diagnosis of diabetes for a student at a campus that previously had no students with diabetes.

(g) The training must include instruction in:

- (1) recognizing signs of hypoglycemia and hyperglycemia;
- (2) steps to take if the blood glucose levels of a student with diabetes are outside the target ranges indicated by the student's individual health care plan;
- (3) how to follow a physician's instructions concerning diabetes medication dosages, administration, and frequency of administration;
- (4) performing finger-sticks to check blood glucose levels, checking ketone levels, and recording the results of those checks;
- (5) administering glucagon and insulin and recording the results of the administration; and

(6) the recommended schedules and food intake for meals and snacks for a student with diabetes, the effect of physical activity on blood glucose levels, and the steps to take if a student's schedule is disrupted.

(h) The training must be provided without charge to the school employee receiving the training.

(i) The board of trustees of a school district shall ensure that there is at least one trained diabetes care assistant at each campus attended by one or more students with diabetes.

Sec. 38.104. INFORMATION FOR CERTAIN EMPLOYEES. A school district shall provide to each school employee who is responsible for transporting a student with diabetes or for supervising a student with diabetes during an off-campus activity a one-page information sheet that:

(1) identifies the student with diabetes;

(2) identifies potential emergencies involving the student's diabetes and appropriate responses to such emergencies; and

(3) provides telephone numbers of persons the employee may contact in an emergency involving the student's diabetes.

Sec. 38.105. REQUIRED CARE OF STUDENTS WITH DIABETES. (a) At the written request of a parent or guardian of a student with diabetes and in compliance with the student's individual health care plan, a trained diabetes care assistant shall:

(1) respond to the student's blood glucose level if it is outside the target range specified in the student's individual health care plan; and

(2) assist the student in following instructions regarding meals, snacks, and physical activity.

(b) A school shall ensure to the greatest extent practicable that the trained diabetes care assistant is present and available to provide the required care to a student with diabetes during the regular school day.

(c) A school district may not restrict the assignment of a student with diabetes to a particular campus on the basis that the campus does not have the required trained diabetes care assistants.

(d) A trained diabetes care assistant who performs an activity described by Subsection (a) in compliance with the individual health care plan of a student with diabetes:

(1) is not considered to be engaging in the practice of:

(A) professional nursing under Chapter 301, Occupations Code, or other state law; or

(B) vocational nursing under Chapter 302, Occupations Code, or other state law; and

(2) is exempt from any applicable state law or rule that restricts the activities that may be performed by a person who is not a health care professional.

Sec. 38.106. INDEPENDENT MONITORING AND TREATMENT. On the written request signed by a parent or guardian of a student with diabetes, and if permitted by the student's individual health care plan, a school shall permit the student to:

- (1) perform blood glucose level checks;
(2) administer insulin through the insulin delivery system the student uses;
(3) treat hypoglycemia and hyperglycemia;
(4) possess on the student's person at any time any supplies or equipment necessary to monitor and care for the student's diabetes; and
(5) otherwise attend to the management and care of the student's diabetes in the classroom, in any area of the school or school grounds, or at any school-related activity.

(b) Subchapter C, Chapter 38, Education Code, as added by this section, applies beginning with the 2004-2005 school year.

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. 38

Amend **CSSB 1952** (Senate committee printing) by adding the following article and sections, numbered appropriately:

ARTICLE _____. LIQUID WASTES MANIFESTS

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

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

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

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

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

SECTION _____.03. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2003.

The floor amendment was read and was adopted by a viva voce vote.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 39

Amend **CSSB 1952** (committee printing), ARTICLE 10, Section 152.0412, Subsection (e), on page 8, line 47, between "section" and " " insert the following:
"for a time period to be promulgated by the comptroller".

The floor amendment was read and was adopted by a viva voce vote.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 40

Amend **CSSB 1952** (Senate committee printing) Article 28 by adding new SECTION 28.04 and renumber subsequent sections accordingly:

SECTION 28.04. Section 7.0025, Water Code, is amended to read as follows:

Sec. 7.0025. INITIATION OF ENFORCEMENT ACTION USING INFORMATION PROVIDED BY PRIVATE INDIVIDUAL. (a) The commission may initiate an enforcement action on a matter under its jurisdiction under this code or the Health and Safety Code based on a combination of information the commission [it] receives from a private individual and information developed by the commission if that combined information, in the commission's judgment, is of sufficient value and credibility to warrant the initiation of an enforcement action.

(b) The executive director or the executive director's designated representative may evaluate the value and credibility of information received from a private individual and the merits of any proposed enforcement action based on that information. In evaluating information under this subsection, the executive director or the executive director's designated representative shall consider the following criteria:

(1) the individual providing the information must be willing to:

(A) submit a sworn affidavit attesting to the facts that constitute the alleged violation and authenticating any writings, recordings, or photographs provided by the individual; and

(B) testify in any enforcement proceedings regarding the alleged violation; and

(2) if the executive director relies on any physical or sampling data submitted by an individual to prove one or more elements of an enforcement case, the individual submitting the physical or sampling data must submit a sworn affidavit that the individual followed relevant commission protocols when collecting the data.

(c) The commission by rule may adopt additional criteria for the executive director to use in evaluating the value and credibility of information received from a private individual and for use of that information in an enforcement action.

(d) A private individual who submits information on which the commission relies for all or part of an enforcement case may be called to testify in the enforcement proceedings and is subject to all sanctions under law for knowingly falsifying evidence. If the commission relies on the information submitted by a private individual to prove an enforcement case, any physical or sampling data must have been collected or gathered in accordance with commission protocols. The commission is not required to call a private individual who provides information on which the commission relies unless doing so is essential to the enforcement action.

(e) The commission may not use information provided by a private individual if the information was obtained by trespass or another illegal act.

(f) Information provided by a private individual that is used in an enforcement action is subject to the rules of evidence.

The floor amendment was read.

On motion of Senator Staples, Floor Amendment No. 40 was withdrawn.

Senator Ratliff offered the following amendment to the bill:

Floor Amendment No. 41

Amend **CSSB 1952** by adding Subsection (c) on page 3, line 46, to read as follows:

(c) Proceeds from the sale of surplus and salvage property of the State Aircraft Pooling Board shall be deposited to the credit of the Board.

Amend **CSSB 1952** by adding Subsection (c) on page 3, line 67, to read as follows:

(c) Proceeds from the sale of surplus and salvage property of the State Aircraft Pooling Board shall be deposited to the credit of the Board.

The floor amendment was read and was adopted by a viva voce vote.

Senator Gallegos offered the following amendment to the bill:

Floor Amendment No. 42

Amend **CSSB 1952** by adding the following appropriately numbered article to the bill and renumbering remaining articles of the bill as appropriate:

ARTICLE _____. REGULATION OF CERTAIN FIRE PROTECTION

SPRINKLER SYSTEM JOURNEYMEN AND APPRENTICES

SECTION _____.01. Section 1, Article 5.43-3, Insurance Code, is amended by amending Subdivision (12) and adding Subdivisions (15) and (16) to read as follows:

(12) "License" means the document issued to a responsible managing employee or a fire protection sprinkler system contractor employee authorizing same to engage in the fire protection sprinkler system business in this state.

(15) "Fire protection sprinkler system apprentice" means a person who:

(A) installs, alters, maintains, services, or inspects a fire protection sprinkler system or any part of the system as an employee of a fire protection sprinkler system contractor; and

(B) has less than five years of experience as an employee of a contractor.

(16) "Fire protection sprinkler system journeyman" means a person who:

(A) installs, alters, maintains, services, or inspects a fire protection sprinkler system or any part of the system as an employee of a fire protection sprinkler system contractor; and

(B) has at least five years of experience as an employee of a contractor.

SECTION _____.02. Section 2(b), Article 5.43-3, Insurance Code, is amended to read as follows:

(b) This article does not apply to:

(1) an employee of the United States, this state, or any political subdivision of this state who acts as a fire protection sprinkler system contractor for the employing governmental entity;

(2) the plan, sale, installation, maintenance, or servicing of a fire protection sprinkler system in any property owned by the United States or this state;

(3) a person or organization acting under court order as authorization;

(4) a person or organization that sells or supplies products or materials to a registered fire protection sprinkler system contractor;

(5) an installation, maintenance, or service project for which the total contract price for labor, materials, and all other services is less than \$100, if:

(A) the project is not a part of a complete or more costly project, whether the complete project is to be undertaken by one or more fire protection sprinkler system contractors; or

(B) the project is not divided into contracts of less than \$100 for the purpose of evading this article;

(6) a registered professional engineer acting solely in such professional capacity;

(7) a regular employee of a registered fire protection sprinkler system contractor; ~~[or]~~

(8) an owner or lessee of property that installs a fire protection sprinkler system on the owned or leased property for its own use or for the use by family members and does not offer such property for sale or lease within one year after installation of a fire protection sprinkler system; or

(9) an employee of a fire protection sprinkler system contractor who installs, alters, maintains, services, or inspects fire protection sprinkler systems only in one-family or two-family dwellings as provided by the 2002 edition of the National Fire Protection Association (NFPA) Standard 13D.

SECTION _____.03. Section 3(a), Article 5.43-3, Insurance Code, is amended to read as follows:

(a) The board shall administer this article and may issue rules necessary to its administration through the State Fire Marshal. Under rules adopted under this subsection, the board shall operate ~~[may create]~~ a specialized licensing or registration program for fire protection sprinkler system contractors and for journeymen and apprentices of those contractors.

SECTION _____.04. Section 4, Article 5.43-3, Insurance Code, is amended by adding Subsections (c-1), (c-2), and (d-1) and amending Subsection (d) to read as follows:

(c-1) Each employee of a fire protection sprinkler system contractor who installs, alters, maintains, services, or inspects a fire protection sprinkler system and who has at least five years of documented experience as a fire protection sprinkler system employee or apprentice shall obtain a journeyman license. The board shall issue the license conditioned on the successful completion of the examination requirement and other requirements prescribed by the rules adopted under this article. Each applicant for a journeyman license must submit with the application a nonrefundable examination fee in an amount not to exceed \$50.

(c-2) Each employee of a fire protection sprinkler system contractor who installs, alters, maintains, services, or inspects fire protection sprinkler systems and who has less than five years of experience as an employee of a fire protection sprinkler system contractor must register with the board as an apprentice. To be eligible for registration, the applicant must:

(1) meet the requirements prescribed by the rules adopted under this article; and

(2) submit a nonrefundable registration fee in an amount not to exceed \$15.

(d) An initial contractor [A] certificate of registration and an initial managing employee [a] license are valid for a period of one year from the date of issuance [issue] and are renewable [annually] on payment of the renewal [annual] fee; provided, however, that the initial certificates of registration or licenses issued on or after September 1, 1983, may be issued for periods of less than one year and the annual fee shall be prorated proportionally].

(d-1) A journeyman license and an apprentice certificate of registration are valid for one year from the date of issuance and are renewable annually on the anniversary of the date of issuance on payment of the applicable renewal fee. The renewal fee for a journeyman license is \$20. The renewal fee for an apprentice certificate of registration is \$15.

SECTION _____.05. Sections 5(a) and (c), Article 5.43-3, Insurance Code, are amended to read as follows:

(a) The board shall not issue a contractor certificate of registration under this article unless the applicant files with the board evidence of a general liability insurance policy that includes products and completed operations coverage. The limits of insurance coverage required by this section shall be in an amount not less than \$100,000 combined single limits for bodily injury and property damage for each occurrence and not less than \$300,000 aggregate for all occurrences per policy year, unless the board increases or decreases the amounts under Section 7 of this article. The policy shall be conditioned to pay on behalf of the insured those amounts that the insured is legally obligated to pay as damages because of bodily injury and property damage caused by an occurrence involving the insured or the insured's servant, officer, agent, or employee in the conduct of any business registered under this article.

(c) Failure to maintain liability insurance required under this section constitutes grounds for the denial, suspension, or revocation of a contractor certificate of registration issued under this article after notice and opportunity for hearing.

SECTION _____.06. Section 5A(a), Article 5.43-3, Insurance Code, is amended to read as follows:

(a) Each renewal of a license or certificate of registration issued under this article is valid for a period of two years. The managing employee license fee or contractor registration fee for each year of the two-year period is payable on renewal.

SECTION _____.07. Section 5B, Article 5.43-3, Insurance Code, is amended to read as follows:

Sec. 5B. EXAMINATION. (a) Not later than the 30th day after the day on which an examination is administered under this article, the board shall send notice to each examinee of the results of the examination.

(b) If an examination is graded or reviewed by a national testing service, the board shall send notice to each examinee of the results of the examination within two weeks after the date on which the board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall send notice to each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the examination administered under this article, the board shall send to the person an analysis of the person's performance on the examination.

(d) A person who fails the examination for a fire protection sprinkler system journeyman license may not retake the examination before the 90th day after the date of the initial examination.

SECTION _____.08. Section 5C, Article 5.43-3, Insurance Code, is amended to read as follows:

Sec. 5C. CONTINUING EDUCATION. (a) Except as provided by Subsection (b) of this section, the [The] board may adopt procedures for certifying and may certify continuing education programs. Participation in the programs is voluntary.

(b) The board shall adopt procedures for certifying and shall certify continuing education programs for fire protection sprinkler system journeymen. A journeyman must successfully complete six hours of continuing education courses on the laws and codes governing fire protection sprinkler systems to be eligible to renew a license under this article.

SECTION _____.09. Section 8, Article 5.43-3, Insurance Code, is amended to read as follows:

Sec. 8. PROHIBITED ACTS. A person or organization may not:

(1) plan, sell, install, maintain, or service a fire protection sprinkler system without a valid certificate of registration;

(2) act as a fire protection sprinkler system contractor under a certificate of registration without having at least one full-time employee who holds a valid responsible managing employee license; provided, however, that a person or organization with a current certificate of registration may act as a fire protection sprinkler system contractor for 30 days after the death or dissociation of its licensed responsible managing employee or for such longer period as may be approved by the board pursuant to the rules adopted hereunder;

(3) act as a responsible managing employee, journeyman, or apprentice for a fire protection sprinkler system contractor without a valid license or certificate of registration, as applicable;

(4) obtain or attempt to obtain a certificate of registration or license by fraudulent representation; or

(5) plan, sell, install, maintain, or service a fire protection sprinkler system in violation of this article or the rules adopted under this article.

SECTION _____.10. (a) Not later than January 1, 2004, the Texas Department of Insurance and the state fire marshal shall adopt rules and establish the procedures and examination requirements necessary to implement the licensing of fire protection sprinkler system journeymen and the registration of fire protection sprinkler system apprentices under Article 5.43-3, Insurance Code, as amended by this article.

(b) A fire protection sprinkler system journeyman is not required to hold a license under Article 5.43-3, Insurance Code, as amended by this article, before July 1, 2004.

(c) A fire protection sprinkler system apprentice is not required to register under Article 5.43-3, Insurance Code, as amended by this article, before July 1, 2004.

(d) A fire protection sprinkler system employee who has at least five years of experience on the effective date of this article and who applies for a fire protection sprinkler system journeyman license within six months of the effective date of this article is not required to pass a license examination under Article 5.43-3, Insurance Code, as amended by this article, to receive a journeyman license.

SECTION _____.11. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for this article to have immediate effect, this article takes effect September 1, 2003.

The floor amendment was read.

On motion of Senator Gallegos, Floor Amendment No. 42 was temporarily withdrawn.

Senator Van de Putte offered the following amendment to the bill:

Floor Amendment No. 43

Amend **CSSB 1952** (Senate committee report) by adding the following appropriately numbered ARTICLE to the bill and renumbering the other ARTICLES of the bill appropriately:

ARTICLE _____. RETENTION OF INVESTIGATIVE RECORDS
BY DEPARTMENT OF PUBLIC SAFETY

SECTION _____.01. Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.0203 to read as follows:

Sec. 411.0203. RETENTION OF INVESTIGATIVE RECORDS. On completion of an investigation for which the department is not otherwise required by law to retain all records relating to the investigation, the department shall retain all records relating to the investigation for at least 60 days after the date the department completed the investigation.

The floor amendment was read and failed of adoption by the following vote: Yeas 9, Nays 20.

Yea: Barrientos, Gallegos, Hinojosa, Lucio, Madla, Shapleigh, Van de Putte, West, Whitmire.

Nay: Armbrister, Averitt, Brimer, Carona, Deuell, Ellis, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Nelson, Ogden, Ratliff, Shapiro, Staples, Wentworth, Williams, Zaffirini.

Absent: Bivins, Duncan.

Senator Van de Putte offered the following amendment to the bill:

Floor Amendment No. 44

Amend **CSSB 1952** by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES accordingly:

ARTICLE _____. DRIVER'S LICENSES

SECTION _____.01. (a) Section 521.142(a), Transportation Code, is amended to read as follows:

(a) An application for an original license must state the applicant's full name and place and date of birth. This information must be verified by presentation of proof of identity satisfactory to the department. The department shall accept as proof of the applicant's identity an identity document that is issued by the government of another country, if that document bears the applicant's photograph, full name, and date of birth, and the government of the other country has established reasonable mechanisms by which the department can verify the identity document. For purposes of this section, an identity document includes a passport, a consular identity document, and a national identity document. On the reverse side of a driver's license, the department shall print the license holder's country of citizenship and indicate the country of citizenship by a uniform symbol or code on the face of the license in the space where the department indicates a restriction or endorsement.

(b) Subsection (a) of this section takes effect September 1, 2003.

The floor amendment was read and failed of adoption by the following vote: Yeas 9, Nays 18.

Yea: Armbrister, Barrientos, Gallegos, Hinojosa, Lucio, Madla, Shapleigh, Van de Putte, West.

Nay: Averitt, Brimer, Carona, Deuell, Ellis, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Nelson, Ogden, Ratliff, Shapiro, Wentworth, Williams, Zaffirini.

Absent: Bivins, Duncan, Staples, Whitmire.

Senator Harris offered the following amendment to the bill:

Floor Amendment No. 45

Amend **CSSB 1952** by adding the following appropriately numbered SECTION:

SECTION _____. Section 3.07(f), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes) is amended to read as follows:

(f) The association is responsible for the cost of approved charges for [animal] drug testing services only for animals racing at the association's racetrack [under this section]. The commission shall adopt rules to allocate responsibility for the costs of human drug testing of a license.

The floor amendment was read and was adopted by a viva voce vote.

Senator Harris offered the following amendment to the bill:

Floor Amendment No. 46

Amend **CSSB 1952** by adding the following appropriately numbered SECTION:

SECTION _____. Section 3.07, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes) is amended by adding subsection (h) to read as follows:

(h) The commission by rule may determine the expiration date of outstanding tickets and pari-mutuel vouchers. Pari-mutuel vouchers that expire may be used by an association to pay the charges associated with medication or drug testing. If the amount of the expired pari-mutuel vouchers held exceeds the amount needed to pay the charges, the association shall pay the excess to the commission for deposit in the general revenue fund.

The floor amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 47

Amend **CSSB 1952** by adding a new SECTION to read as follows and renumbering the remaining sections of the bill accordingly:

SECTION _____. Article 6, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes) is amended by adding Section 6.20 to read as follows:

SECTION 6.20. EXPEDITED LICENSE. (a) The commission shall adopt rules providing for expedited licensing for appropriate applications in which a person was previously licensed.

(b) An application filed under this section must be for the same class of license under which the person previously operated. The commission shall develop an expedited application form and procedure for issuing licenses under this section. The commission shall grant a license to an applicant under this section if the commission determines:

(1) no grounds for denial of the license exist under Section 6.06 of this Act; and

(2) the applicant will comply with all commission rules.

(c) The commission shall waive any rule requiring an application fee associated with the processing of an application filed under this section, but may require reimbursement by the applicant for costs charged to the commission by the Department of Public Safety or the State Office of Administrative Hearings for a background investigation or administrative proceedings required for the application.

(d) A license issued under this section is subject to all requirements in the Act or commission rule regarding the licensing and operation of pari-mutuel racetracks.

The floor amendment was read and was adopted by a viva voce vote.

Senator Van de Putte offered the following amendment to the bill:

Floor Amendment No. 48

Amend **CSSB 1952** on page 40, following line 11, by adding a new Article 37 to read as follows and renumbering subsequent articles:

"ARTICLE 37. REGULATION OF MEDICAL EXAMS

SECTION 37.01. Section 155.056, Occupations Code, is amended to read as follows:

(a) An applicant must pass [each part of] an examination administered or required. [within three attempts, except that an applicant who has passed all but one part of an examination within three attempts may take the remaining part of the examination one additional time.]

(b) [Notwithstanding subsection (a), an applicant is considered to have satisfied the requirements of this section if the applicant.] The board may by rule limit the number of attempts an applicant may take the required exam before passing. However, the board must consider an applicant to have satisfied all requirements of this section if the applicant:

(1) passed all but one part of an examination within three attempts may take the remaining part of the examination one additional time; or

[+] (2) has passed all but one part of an examination approved by the board within three attempts and passed the remaining part of the examination within five attempts[+] and [complete] completes in this state an additional two years of post-graduate medical training approved by the board; or

[2] (3) is specialty board certified by a specialty board that:

- (A) is a member of the American Board of Medical Specialties; [~~or~~]
- (B) is approved by the American Osteopathic Association; [~~and~~] or
- (C) is recognized by the Bureau of Osteopathic Specialists; or
- (D) is approved by the board, following a hearing by the board."

The floor amendment was read and failed of adoption by a viva voce vote.

(Senator Ratliff in Chair)

Senator West offered the following amendment to the bill:

Floor Amendment No. 49

Amend **CSSB 1952** (Senate committee report) as follows:

(1) In SECTION 30.02 of the bill, in added Section 2252.904, Government Code (page 34, line 52 through page 35, line 22), by striking Subsections (a) and (b) and substituting the following:

(a) In this section:

(1) "Branch" means a location of a financial institution, other than the financial institution's home office, at which the financial institution does business.

(2) "Certified audit" means an audit of the company's books, records, and accounts and the company's systems of internal control performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(3) "Company" means a corporation, partnership, limited partnership, registered limited liability partnership, trust, association, joint stock company, joint venture, limited liability company, or other form of business organization. The term does not include a sole proprietorship or individual.

(4) "County in which the financial institution does business" means any county in which the financial institution has a branch or home office.

(5) "Financial irregularity" means an intentional misstatement or omission of information relating to a financial transaction or matter. The term includes embezzlement, fraud, and the falsification of records to misappropriate assets.

(6) "Independent certified public accountant" means a certified public accountant who:

(A) is not affiliated with, is not an employee, principal, or direct or indirect owner of, and is not in any way controlled by the audited company; and

(B) meets independence standards adopted by appropriate standard-setting or regulatory entities.

(7) "State governmental entity" means:

(A) a board, commission, department, office, or other agency in the executive branch of state government created under the constitution or a statute of the state, including an institution of higher education as defined by Section 61.003, Education Code;

(B) the legislature or a legislative agency; or

(C) the Texas Supreme Court, the Texas Court of Criminal Appeals, a court of appeals, a state judicial agency, or the State Bar of Texas.

(b) A company, including a financial institution, that enters into a contract with a state governmental entity that involves the expenditure of state funds of more than \$1 million or the deposit of state funds of \$1 million or more shall:

(1) immediately report to the entity any financial irregularity relating to the contract or the company's financial position that is detrimental to the interest of the entity;

(2) annually during the contract period submit to the entity a certified audit of the company's operations, except as provided by Subsection (g); and

(3) if the company is a financial institution, file:

(A) an itemized report covering the preceding year stating separately for each county in which the financial institution does business, the financial institution's community reinvestment activities, mortgage loan activities and practices, and compliance with fair lending standards in the respective county; and

(B) any other related information as specified by the comptroller.

(2) In SECTION 30.02 of the bill, in added Section 2252.904(e), Government Code (page 35, line 31), between "(b)(2)" and "is", insert "or (b)(3)".

(3) In SECTION 30.02 of the bill, immediately following added Section 2252.904(g), Government Code (page 35, between lines 44 and 45), insert the following:

(h) For purposes of Subsection (b), the amount of expenditures or deposit of state funds with respect to a single financial institution means the aggregate amount of those expenditures or deposits at the financial institution's home office and at each branch of the financial institution in this state.

The floor amendment was read and was adopted by a viva voce vote.

Senator Van de Putte offered the following amendment to the bill:

Floor Amendment No. 50

Amend **CSSB 1952** by adding the following appropriately numbered article to the bill and renumbering the subsequent articles of the bill accordingly:

ARTICLE _____. ENERGY CONSERVATION IN STATE BUILDINGS

SECTION _____. Subsection (e), Section 447.004, Government Code, as amended by Chapters 573, 1158, and 1398, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(e) A state agency or an institution of higher education may not begin construction of a new state building or a major renovation project before the design architect or engineer for the construction or renovation has:

(1) certified to the appropriate authority having jurisdiction [agency or institution] that the construction or renovation complies with:

(A) the standards established under this section; and

(B) the alternative energy and energy-efficient architectural and engineering design evaluation requirements under Sections 2166.401, 2166.403, and 2166.408; and

(2) provided [~~a copy of that certification~~] to the appropriate authority having jurisdiction and the state energy conservation office copies of:

(A) each certification under Subdivision (1); and

(B) any written evaluation or detailed economic feasibility study prepared in accordance with Section 2166.401, 2166.403, or 2166.408.

SECTION _____. Subsection (a), Section 2166.153, Government Code, is amended to read as follows:

(a) A project analysis consists of:

(1) a complete description of the project and a justification of the project prepared by the using agency;

(2) a detailed estimate of the amount of space needed to meet the needs of the using agency and to allow for realistic growth;

(3) a description of the proposed project prepared by a design professional that:

(A) includes schematic plans and outline specifications describing the type of construction and probable materials to be used; and

(B) is sufficient to establish the general scope and quality of construction;

(4) an estimate of the probable cost of construction;

(5) a description of the proposed site of the project and an estimate of the cost of site preparation;

(6) an overall estimate of the cost of the project, including necessary funding for life-cycle costing, whole building integrated design, commissioning, and postoccupancy building performance verification;

(7) information prepared under Section 2166.451 about historic structures considered as alternatives to new construction;

(8) an evaluation of energy alternatives and energy-efficient architectural and engineering design alternatives as required by Sections [Section] 2166.401, 2166.403, and 2166.408; and

(9) other information required by the commission.

SECTION _____. The section heading to Section 2166.403, Government Code, is amended to read as follows:

Sec. 2166.403. ALTERNATIVE ENERGY AND ENERGY-EFFICIENT ARCHITECTURAL AND ENGINEERING DESIGN IN NEW BUILDING CONSTRUCTION.

SECTION _____. Section 2166.403, Government Code, is amended by amending Subsections (b) and (c) and adding Subsections (b-1) and (b-2) to read as follows:

(b) During the planning phase of the proposed construction, the commission, or the governing body of the appropriate agency or institution that is undertaking a project otherwise exempt from this chapter under Section 2166.003, must present a detailed written evaluation at [shall verify in] an open meeting to verify the economic feasibility of:

(1) using energy-efficient architectural or engineering design alternatives; or

(2) incorporating into the building's design and proposed energy system alternative energy devices for space heating and cooling, water heating, electrical loads, and interior lighting.

(b-1) A detailed written evaluation under Subsection (b) must be made available to the public at least 30 days before the open meeting at which it is presented.

(b-2) In each detailed written evaluation under Subsection (b), the [The] commission or governing body shall determine economic feasibility for each function by comparing the estimated cost of providing energy for all or part of the function using conventional design practices and energy systems or operating under conventional architectural or engineering designs with the estimated cost of providing energy for all or part of the function using alternative energy devices or operating under alternative energy-efficient architectural or engineering designs during the economic life of the building. The comptroller's state energy conservation office, or its successor, must approve any methodology or electronic software used by the commission or governing body, or an entity contracting with the commission or governing body, to make a comparison or determine feasibility under this subsection.

(c) If the use of alternative energy devices or energy-efficient architectural design alternatives for a particular function is determined to be economically feasible under Subsection (b-2) [~~b~~], the commission or governing body shall include the use of alternative energy devices or energy-efficient architectural design alternatives for that function in the construction plans.

SECTION _____. Subdivision (1), Subsection (d), Section 2166.403, Government Code, is amended to read as follows:

(1) "Alternative energy" means a renewable energy resource. The term includes solar energy, biomass energy, geothermal energy, and wind energy.

SECTION _____. Subchapter I, Chapter 2166, Government Code, is amended by adding Section 2166.408 to read as follows:

Sec. 2166.408. EVALUATION OF ARCHITECTURAL AND ENGINEERING DESIGN ALTERNATIVES. (a) For each project for which a project analysis is prepared under Subchapter D and for which architectural or engineering design choices will affect the energy-efficiency of the building, the commission or the private design professional retained by the commission shall prepare a written evaluation of energy-efficient architectural or engineering design alternatives for the project.

(b) The evaluation must include information about the economic and environmental impact of various energy-efficient architectural or engineering design alternatives, including an evaluation of economic and environmental costs both initially and over the life of the architectural or engineering design.

(c) The evaluation must identify the best architectural and engineering designs for the project considering both economic and environmental costs and benefits.

SECTION _____. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for this article to take effect immediately, this article takes effect September 1, 2003.

The floor amendment was read and was adopted by a viva voce vote.

Senator Nelson offered the following amendment to the bill:

Floor Amendment No. 51

Amend **CSSB 1952** by inserting the following new section in the bill to read as follows:

SECTION 1. Subchapter I, Chapter 391, Transportation Code, is amended by adding Section 391.256 to read as follows:

Sec. 391.256. SCENIC BYWAYS PROGRAM. (a) The department shall plan, design, and establish a program for designating highways as State Scenic Byways.

(b) The department shall:

(1) develop grant projects in accordance with 23 U.S.C. Section 162 for highways designated as State Scenic Byways, National Scenic Byways, or All-American Roads; and

(2) apply for funding under 23 U.S.C. Section 162 for the grant projects.

(c) The department may prohibit outdoor advertising according to 23 U.S.C. Section 131(s).

(d) The department may not use money from the state highway fund or the Texas Mobility Fund for the purposes of this section.

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

SECTION 2. This Act takes effect September 1, 2003.

The floor amendment was read and failed of adoption by the following vote: Yeas 12, Nays 13.

Yeas: Averitt, Barrientos, Brimer, Carona, Deuell, Hinojosa, Janek, Nelson, Shapiro, Shapleigh, Wentworth, Whitmire.

Nays: Armbrister, Ellis, Estes, Gallegos, Jackson, Lindsay, Lucio, Madla, Ratliff, Staples, Van de Putte, West, Zaffirini.

Absent: Bivins, Duncan, Fraser, Harris, Ogden, Williams.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 52

Amend **CSSB 1952** by adding appropriately numbered section to read as follows:

SECTION _____. Any requirement for continuing education hours because of any professional certification license, or other form of authorization held by a member of the legislature or an employee of the legislative branch of government is satisfied because of the person's legislative service during the period the person holds office or is employed in the legislative branch. This section supersedes any other applicable law to the extent of any conflict.

The floor amendment was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Van de Putte asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 52.

Senator Lindsay offered the following amendment to the bill:

Floor Amendment No. 53

Amend **CSSB 1952** by amending Section 10.04(b) and (c) to read as follows:

"(b) The Texas Transportation Commission shall certify to the comptroller the date on which the Texas Department of Transportation's registration and title system, as modified under Subsection (a) of this section, is in use by the 25 county tax assessor-collectors that remitted to the comptroller the largest amount of taxes imposed under Chapter 152, Tax Code, during the state fiscal year ending August 31, 2003.

(c) If the date certified by the Texas Transportation Commission to the comptroller under Subsection (b) of this section is later than September 23, 2003, the Texas Department of Transportation shall transfer \$23 million from the state highway fund to the general revenue fund on the first day of each month after that date until the earlier of:

(1) the date the commission issues the certification under Subsection (b) of this section; or

(2) the date the total amount transferred under this subsection equals the lesser of:

(A) \$200 million; or

(B) the total amount in the state highway fund that is not allocated as the result of a requirement in the Texas Constitution.

The floor amendment was read.

On motion of Senator Lindsay, Floor Amendment No. 53 was withdrawn.

Senator Lindsay offered the following amendment to the bill:

Floor Amendment No. 54

Amend **CSSB 1952**, Section ____ by inserting the following:

Sec. 25.1032, Government Code

Notwithstanding any other provision, a county civil court at law has concurrent jurisdiction with the district court in Harris County of eminent domain proceedings, both statutory and inverse, regardless of the amount in controversy.

The floor amendment was read and was adopted by a viva voce vote.

Senator Jackson offered the following amendment to the bill:

Floor Amendment No. 55

Amend **CSSB 1952** in the following way:

(1) Strike existing Section 361.122, Health and Safety Code, and replace it with the following language by adding a new SECTION and renumbering the subsequent sections accordingly:

SECTION _____. Section 361.122, Health and Safety Code, is amended to read as follows:

Sec. 361.122. DENIAL OF CERTAIN LANDFILL PERMITS. (a) The commission may not issue a permit for a Type IV landfill if:

(1) the proposed site is located within 100 feet of a canal that is used as a public drinking water source or for irrigation of crops used for human or animal consumption;

(2) the proposed site is located in a county with a population of more than 225,000 that is located adjacent to the Gulf of Mexico; and

(3) prior to final consideration of the application by the commission, the commissioners of the county in which the facility is located have adopted a resolution recommending denial of the application.

(b) In addition to the restriction on the location of a Type IV landfill under Subsection (a), the commission may not issue a permit for a Type IV landfill if, on or before January 13, 2003, the proposed facility was determined by the applicable regional planning commission created under Chapter 391, Local Government Code, to be incompatible with a regional solid waste management plan adopted under Section 363.062 of this code.

The floor amendment was read and was adopted by the following vote: Yeas 13, Nays 12.

Yeas: Armbrister, Barrientos, Fraser, Hinojosa, Jackson, Janek, Madla, Nelson, Ogden, Staples, Van de Putte, Whitmire, Williams.

Nays: Brimer, Ellis, Estes, Gallegos, Lindsay, Lucio, Ratliff, Shapiro, Shapleigh, Wentworth, West, Zaffirini.

Absent: Averitt, Bivins, Carona, Deuell, Duncan, Harris.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 56

Amend **CSSB 1952** in SECTION 22.02 of the bill, in proposed Section 481.078, Government Code (committee printing, page 14, line 21), by striking "and business incentives" and inserting "business incentives, and new military missions at Texas military installations".

The floor amendment was read and was adopted by a viva voce vote.

Senator Gallegos offered the following amendment to the bill:

Floor Amendment No. 57

Amend **CSSB 1952** by adding the following appropriately numbered ARTICLE and renumbering subsequent articles of the bill accordingly:

ARTICLE _____. INTERIM STUDY OF THE
CLUSTERING OF SEX OFFENDERS

SECTION _____.01. (a) The Senate Committee on Criminal Justice shall study the phenomenon of the clustering of sex offenders in certain areas of the state.

(b) Not later than January 1, 2005, the committee shall submit a report giving details of the study's finding to the lieutenant governor and the speaker of the house of representatives. The finding of the study must include:

(1) an assessment of where sex offenders tend to reside and the relationship of those residences to certain geographic areas of the state; and

(2) recommendations for potential legislation that will address sex offenders and where sex offenders tend to reside.

The floor amendment was read.

On motion of Senator Gallegos, Floor Amendment No. 57 was withdrawn.

(President in Chair)

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 58

Amend **CSSB 1952** (Senate committee printing) by adding the following appropriately numbered ARTICLE to the bill and by renumbering existing ARTICLES of the bill accordingly:

ARTICLE ____ TEXASNEXTSTEP GRANT PROGRAM

SECTION ____ .01. Chapter 56, Education Code, is amended by adding Subchapter R to read as follows:

SUBCHAPTER R. TEXASNEXTSTEP GRANT PROGRAM

Sec. 56.481. DEFINITIONS. In this subchapter:

(1) "Coordinating board" means the Texas Higher Education Coordinating Board.

(2) "Eligible institution" means:

- (A) a public junior college;
- (B) a public technical institute; or
- (C) a public state college.

(3) "Institution of higher education," "public junior college," "public technical institute," and "public state college" have the meanings assigned by Section 61.003.

(4) "Textbook costs" means the costs of textbooks and similar educational materials required for course work at an eligible institution.

Sec. 56.482. PROGRAM NAME; PURPOSE. (a) The student financial assistance program authorized by this subchapter is known as the TexasNextStep grant program, and an individual grant awarded under this subchapter is known as a TexasNextStep grant.

(b) The purpose of this subchapter is to provide a grant of money to enable eligible students to attend two-year public institutions of higher education in this state.

Sec. 56.483. ADMINISTRATION OF PROGRAM. (a) The coordinating board shall administer the TexasNextStep grant program and shall adopt any rules necessary to implement the TexasNextStep grant program or this subchapter. The coordinating board shall consult with the student financial aid officers of eligible institutions in developing the rules.

(b) The coordinating board shall adopt rules to provide a TexasNextStep grant to an eligible student enrolled in an eligible institution in a manner consistent with the administration of federal student financial aid programs.

(c) The total amount of grants awarded under the TexasNextStep grant program may not exceed the amount available for the program from appropriations, gifts, grants, or other funds.

Sec. 56.484. INITIAL ELIGIBILITY FOR GRANT. (a) To be eligible initially for a grant under the TexasNextStep grant program, a person must:

(1) be a resident of this state as determined by coordinating board rules;

(2) not later than the 16th month after the month in which the person graduated from high school, enroll or have enrolled as an entering student for at least one-half of a full course load for an entering student, as determined by the coordinating board, in an associate degree or certificate program at an eligible institution;

(3) have graduated from:

(A) a public high school in this state; or

(B) an accredited private high school or a home school or other nontraditional educational program in this state;

(4) have applied for any available financial aid or assistance;

(5) meet eligibility requirements necessary to receive federal student financial aid, other than requirements regarding financial need; and

(6) comply with any additional nonacademic requirement adopted by the coordinating board under this subchapter.

(b) A person is not eligible to receive a TexasNextStep grant if the person:

(1) has been granted an associate or baccalaureate degree; or

(2) is concurrently enrolled in an institution of higher education other than an eligible institution, unless the person is enrolled in the person's final semester or term at the eligible institution before completing the person's associate degree or certificate program and the person enrolls in one or more courses that, if successfully completed, would allow the person to complete the degree or certificate requirements.

(c) A person may not receive a TexasNextStep grant for more than 90 semester credit hours or the equivalent, including any developmental course work required by an eligible institution.

(d) Subject to Section 56.487(b)(2), a person may receive a TexasNextStep grant regardless of whether the person is eligible for a TEXAS grant or a TEXAS grant II.

(e) A person may not receive a TexasNextStep grant for a semester or term that begins on or after the third anniversary of the initial award of a TexasNextStep grant to the person.

Sec. 56.485. CONTINUING ELIGIBILITY AND ACADEMIC PERFORMANCE REQUIREMENTS. (a) After initially qualifying for a TexasNextStep grant, a person may continue to receive a TexasNextStep grant during each semester or term in which the person is enrolled at an eligible institution only if the person:

(1) is enrolled in an associate degree or certificate program at an eligible institution;

(2) except as provided by Subsection (b), is enrolled for at least one-half of a full course load for a student in an associate degree or certificate program, as determined by the coordinating board;

(3) makes satisfactory academic progress toward an associate degree or certificate;

(4) meets eligibility requirements necessary to receive federal student financial aid, other than requirements regarding financial need; and

(5) complies with any additional nonacademic requirement adopted by the coordinating board.

(b) A person is exempt from the one-half course load requirement of Subsection (a)(2) if the TexasNextStep grant is awarded for the person's final semester or term before the person completes the person's degree or certificate program and the person enrolls in one or more courses that, if successfully completed, would allow the person to complete the degree or certificate requirements. A person who qualifies for an exemption under this subsection is not eligible for a TexasNextStep grant in a subsequent semester or term, regardless of whether the person graduates as planned.

(c) If a person fails to meet any of the requirements of Subsection (a) after the completion of any semester or term, the person may not receive a TexasNextStep grant during the next semester or term in which the person enrolls. A person may become eligible to receive a TexasNextStep grant in a subsequent semester or term if the person:

(1) completes a semester or term during which the person is not eligible for the grant; and

(2) meets all the requirements of Subsection (a).

(d) For purposes of this section, a person makes satisfactory academic progress toward an associate degree or certificate only if the person meets the standards for academic progress as determined by the eligible institution.

(e) A person's eligibility to receive a TexasNextStep grant is not affected by the person's enrollment in or transfer to another eligible institution.

Sec. 56.486. GRANT USE. A person receiving a TexasNextStep grant may use the money to pay any usual and customary cost of attendance at an eligible institution incurred by the person. The institution may disburse all or part of the proceeds of a TexasNextStep grant to an eligible person only if the tuition and required fees and textbook costs incurred by the person at the institution have been paid.

Sec. 56.487. GRANT AMOUNT. (a) The amount of a TexasNextStep grant for a student enrolled full-time at an eligible institution is the amount determined by the coordinating board as the average amount of tuition and required fees and textbook costs that a resident student enrolled full-time in an associate degree or certificate program would be charged for that semester or term at the institution, except that if the eligible institution is a public junior college, the average amount of those charges shall be computed without including the portion of tuition and required fees charged only to a student who resides outside the junior college district.

(b) The coordinating board shall adopt rules that:

(1) allow the coordinating board to increase or decrease, in proportion to the number of semester credit hours in which a student is enrolled, the amount of a TexasNextStep grant award under this section to a student who is enrolled in a number of semester credit hours in excess of or below the number of semester credit hours described in Section 56.484(a)(2) or 56.485(a)(2); and

(2) require the coordinating board to reduce the amount of a TexasNextStep grant by the amount of any state or federal gift aid for which the person receiving the grant is eligible if that aid could be applied, according to the terms of the aid, toward the person's tuition and required fees and textbook costs at the eligible institution.

(c) Not later than January 31 of each year, the coordinating board shall publish the amounts of each grant established by the board with respect to an eligible institution for the academic year beginning the next fall semester.

(d) An eligible institution may not:

(1) charge a person attending the institution who also receives a TexasNextStep grant an amount of tuition and required fees in excess of the amount of the TexasNextStep grant received by the person for tuition and required fees, except that if the eligible institution is a public junior college, the institution may charge an additional amount to the person based on the person's residence outside the junior college district; or

(2) deny admission to or enrollment in the institution based on a person's eligibility to receive a TexasNextStep grant or a person's receipt of a TexasNextStep grant.

Sec. 56.488. BIENNIAL REPORT. The coordinating board shall track the academic performance and subsequent educational attainment of grant recipients, by institution, and report this information biennially to the legislature and the comptroller.

SECTION _____.02. (a) The change in law made by this Act in adding Subchapter R, Chapter 56, Education Code, applies beginning with the 2004-2005 academic year, except that the Texas Higher Education Coordinating Board may not award a TexasNextStep grant under that subchapter to an entering student who enrolls in an eligible institution before the 2005-2006 academic year.

(b) The Texas Higher Education Coordinating Board shall adopt rules for the administration of Subchapter R, Chapter 56, Education Code, as added by this Act, as soon as practicable after this Act takes effect. For that purpose, the coordinating board may adopt the initial rules in the manner provided by law for emergency rules.

The floor amendment was read.

Senator Ellis offered the following amendment to the amendment:

Floor Amendment No. 58A

Amend Floor Amendment No. 58 to **CSSB 1952** (Senate committee printing) as follows:

(1) At the end of proposed Section 56.483, Education Code (page 2, between lines 17 and 18), insert a new Subsection (d) to read as follows:

(d) In determining who should receive a TexasNextStep grant, the coordinating board and the eligible institutions shall give highest priority to awarding TexasNextStep grants to students who demonstrate the greatest financial need.

(2) In proposed Section 56.484(a), Education Code, insert the following new Subdivision (2) and renumber subsequent subdivisions accordingly:

(2) meet financial need requirements as defined by the coordinating board;

(3) In proposed Section 56.485(a), Education Code, insert the following new Subdivision (1) and renumber subsequent subdivisions accordingly:

(1) meets financial need requirements as defined by the coordinating board;

(4) Add at the end of proposed Subchapter R, Chapter 56, Education Code, a new section to read as follows:

Sec. 56.489. APPROPRIATIONS. This subchapter may not be implemented and grants may not be awarded under this subchapter in any state fiscal year unless the legislature appropriates money to fully fund the TEXAS grant program under Subchapter M, as added by Chapter 1590, Acts of the 76th Legislature, Regular Session, 1999, for that same fiscal year.

The amendment to the amendment was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 58 as amended, the amendment as amended was adopted by a viva voce vote.

Senator Hinojosa offered the following amendment to the bill:

Floor Amendment No. 59

Amend **CSSB 1952** by adding the following appropriately numbered article to the bill and renumbering the remaining articles of the bill as appropriate:

ARTICLE _____. PAUL C. MORENO STATE OFFICE BUILDING.

(a) The state office building located in El Paso, Texas, shall be known as the "Paul C. Moreno State Office Building", in honor of State Representative Paul C. Moreno.

(b) The Building and Procurement Commission shall take appropriate action to ensure the building is identified as provided by this article.

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. 60

Amend **CSSB 1952** as follows:

(1) Add a new SECTION and renumber subsequent sections accordingly:

SECTION _____. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.123 to read as follows:

"Sec. 361.123. NUISANCE ODORS EMANATING FROM LANDFILLS. A commission investigator is not required to determine that an odor is capable of causing nausea or headaches in order to categorize the odor as a nuisance odor."

The floor amendment was read and failed of adoption by a viva voce vote.

Floor Amendment No. 61 was not offered.

Senator Williams offered the following amendment to the bill:

Floor Amendment No. 62

Amend **CSSB 1952** by adding appropriately numbered sections as follows and by renumbering remaining sections accordingly:

SECTION _____. As soon as practicable after the effective date of this Act, the Texas Commission on Environmental Quality shall adopt rules governing all aspects of the management and operation of a new commercial landfill facility that proposes to accept nonhazardous industrial solid waste for which a permit has not been issued on or before the effective date of this Act.

SECTION _____. (a) The Texas Commission on Environmental Quality shall suspend the permitting process for any pending application for a permit for a new commercial landfill facility that proposes to accept nonhazardous industrial solid waste until the rules adopted under Section ____ of this Act take effect.

(b) The Texas Commission on Environmental Quality shall provide that the rules adopted under Section ____ of this Act apply to every application for a permit for a new commercial landfill facility that proposes to accept nonhazardous industrial solid waste that is filed on or after the effective date of this Act and every application for a permit for a new commercial landfill facility that proposes to accept nonhazardous industrial solid waste that is pending on the effective date of this Act.

(c) The Texas Commission on Environmental Quality may allow an applicant who filed such an application that is pending on the effective date of this Act to amend the application to conform to the rules adopted under Section ____ of this Act.

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. 63

Amend CSSB 1952 as follows:

(1) Add the following appropriately numbered SECTIONS to the bill and renumber the subsequent SECTIONS accordingly:

SECTION _____. Subtitle F, Title 5, Agriculture Code, is amended by adding Chapter 122 to read as follows:

CHAPTER 122. SALE OF DESERT PLANTS

Sec. 122.001. DEFINITION. In this chapter, "desert plant" means the following genera of plants:

- (1) Agave;
- (2) Ariocarpus;
- (3) Echinocactus;
- (4) Echinocereus;
- (5) Ferocactus;
- (6) Fouquieria;
- (7) Mammillaria;
- (8) Opuntia; and
- (9) Yucca.

Sec. 122.002. ADMINISTRATION. The department shall administer this chapter and adopt rules necessary for its enforcement.

Sec. 122.003. REQUIREMENTS FOR SALE OR TRANSPORT. Unless a desert plant is marked as provided by Section 122.005, a person may not:

- (1) sell the plant;
- (2) offer the plant for sale; or
- (3) transport the plant out of this state.

Sec. 122.004. REGISTRATION REQUIRED. (a) A person who grows or harvests a desert plant for sale must register with the department.

(b) A person described by Subsection (a) must include the following with the registration information provided to the department:

(1) a statement that the desert plants provided for sale will be harvested from the person's property; or

(2) written documentation from the owner of the property from which the desert plants will be harvested granting the person selling or offering to sell the plants the authority to harvest the plants.

Sec. 122.005. MARKING OF DESERT PLANTS. (a) A person subject to Section 122.004 shall mark each desert plant harvested for sale under this chapter with an identification mark prescribed by the department.

(b) The department may charge a fee for providing an identification mark under this section.

Sec. 122.006. STOP-SALE ORDER. In enforcing this chapter, the department may issue and enforce a written or printed order to stop the sale of a desert plant or a shipment of desert plants that is not marked as provided by Section 122.005. If an order is issued, a person may not sell the plant or shipment until it has been properly marked.

Sec. 122.007. AUTHORITY TO SEIZE PLANTS. In enforcing this chapter, the department with or without process may seize a desert plant or a shipment of desert plants that is:

- (1) not marked as provided by Section 122.005; and
- (2) intended for transfer out of this state.

Sec. 122.008. PENALTY. (a) A person commits an offense if the person advertises, sells, or offers for sale a desert plant or a shipment of desert plants that is not clearly and distinctly marked as provided by Section 122.005.

(b) An offense under this section is punishable by:

- (1) a fine not to exceed \$1,000;
- (2) imprisonment for a term not to exceed 180 days; or
- (3) both fine and imprisonment under this subsection.

SECTION _____. Section 12.020, Agriculture Code, is amended by amending Subsections (a) and (b) and adding Subsection (c-1) to read as follows:

(a) If a person violates a provision of this code described by Subsection (c) or (c-1) [of this section] or a rule or order adopted by the department under a provision of this code described by Subsection (c) or (c-1) [of this section], the department may assess an administrative penalty against the person as provided by this section.

(b) The penalty for each violation may be in an amount not to exceed the maximum provided by Subsection (c) or (c-1) [of this section]. Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessments.

(c-1) In addition to provisions described by Subsection (c), Chapter 122 is subject to this section and the applicable penalty amount is \$500.

SECTION _____. Not later than December 1, 2003, the Department of Agriculture shall adopt rules to administer Chapter 122, Agriculture Code, as added by this Act.

SECTION _____. Chapter 122, Agriculture Code, as added by this Act, and Section 12.020, Agriculture Code, as amended by this Act, take effect January 1, 2004.

The floor amendment was read and was adopted by a viva voce vote.

Senator Jackson offered the following amendment to the bill:

Floor Amendment No. 31

Amend **CSSB 1952** by inserting the following:

SECTION _____. Section 2001.002, Occupations Code, is amended by amending Subdivision (5) to read as follows:

(5) "Bingo equipment" means equipment used, made, or sold for the purpose of use in bingo. The term:

(A) includes:

(i) a machine or other device from which balls or other items are withdrawn to determine the letters and numbers or other symbols to be called;

(ii) an electronic or mechanical cardminding device;

(iii) a pull-tab dispenser;

(iv) a bingo card; ~~[and]~~

(v) a bingo ball; and

(vi) any other device commonly used in the direct operation of a bingo game; and

(B) does not include:

(i) a bingo game set commonly manufactured and sold as a child's game for a retail price of \$20 or less unless the set or a part of the set is used in bingo subject to regulation under this chapter; or

(ii) a commonly available component part of bingo equipment such as a light bulb ~~or[;]~~ fuse~~[, or bingo ball]~~.

SECTION _____. Subchapter B, Chapter 2001, Occupations Code, is amended by adding Section 2001.059 to read as follows:

Sec. 2001.059. ADVISORY OPINIONS. (a) A person may request from the commission an advisory opinion regarding compliance with this chapter and the rules of the commission.

(b) The commission shall respond to a request under Subsection (a) not later than the 60th day after the date a request is received, unless the commission determines that the request does not contain sufficient facts to provide an answer on which the requestor may rely. In that event, the commission shall request additional information from the requestor not later than the 10th day after the date the request is received. If the commission requests additional information, the commission shall respond to the request not later than the 60th day after the date additional information is received pursuant to the request for additional information.

(c) A person who requests an advisory opinion under Subsection (a) may act in reliance on the opinion in the conduct of any activity under any license issued under this chapter if the conduct is substantially consistent with the opinion and the facts stated in the request.

(d) An advisory opinion issued under this section is not a rule under Subchapter B of Texas Government Code Chapter 2001, and the rulemaking requirements of that subchapter do not apply to a request for an advisory opinion or any advisory opinion issued by the commission.

(e) Nothing in this section precludes the commission from requesting an attorney general opinion under Section 402.042, Government Code. In the event the commission requests an attorney general opinion on a matter that is the subject of an advisory opinion request under this section, the deadlines established under subsection (b) are tolled until thirty days following the issuance of the attorney general opinion.

(f) The commission may delegate all or part of the authority and procedures for issuing advisory opinions under this section to an employee of the commission.

SECTION _____. Section 2001.103, Occupations Code, is amended by adding Subsections (e)-(h) to read as follows:

(e) Notwithstanding Subsection (c), an authorized organization that holds a regular license to conduct bingo may receive not more than 12 temporary licenses during the 12-month period following the issuance or renewal of the license.

(f) An authorized organization that holds a regular license to conduct bingo may apply for all or any portion of the total number of temporary licenses to which the organization is entitled under Subsection (e) in one application without stating the days or times for which the organization will use the temporary licenses.

(g) An organization that has been issued a temporary license under Subsection (f) shall notify the commission of the specific date and time of the bingo occasion for which the temporary license will be used before using the license. If the commission receives the notification by noon of the day before the day the temporary license will be used, the commission shall verify receipt of the notice before the end of the business day on which the notice is received. If the commission does not receive the notification by noon of the day before the day the temporary license will be used, the commission shall verify receipt of the notice before noon of the business day that follows the day the commission received the notice.

(h) A verification under Subsection (g) may be delivered by facsimile, e-mail, or any other means reasonably contemplated to arrive before the time the temporary license will be used.

SECTION _____. Section 2001.104, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) An applicant shall pay the fees established under Subsection (a) annually. An applicant for a license or renewal of a license may obtain a license that is effective for two years by paying an amount equal to two times the amount of the annual license fee plus \$25.

SECTION _____. Section 2001.105, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) Except as provided by Section 2001.104(d), a license issued under this subchapter is effective for one year.

SECTION _____. Subchapter C, Chapter 2001, Occupations Code, is amended by adding Section 2001.108 to read as follows:

Sec. 2001.108. LICENSE AMENDMENT FOR CHANGE OF BINGO PREMISES OR OCCASIONS. (a) A licensed authorized organization and the licensed commercial lessor at which the organization conducts or will conduct bingo may file a joint application with the commission to change the premises at which the organization may conduct bingo or the times of the organization's bingo occasions to allow the organization to conduct bingo at the same time and premises that another licensed authorized organization is licensed to conduct bingo, if the other organization has ceased, or will cease, conducting bingo at that time and premises. The application must state whether the other organization has ceased or will cease conducting bingo at that time and premises because:

(1) the organization has abandoned or will abandon its licensed time or premises; or

(2) the organization's lease has been or will be terminated.

(b) If the other organization ceased or will cease conducting bingo for the reason stated in Subsection (a)(1), the commission must act on the joint application filed under Subsection (a) not later than the 10th day after the date the application is filed with the commission.

(c) If the other organization ceased or will cease conducting bingo for the reason stated in Subsection (a)(2), the commission must act on the joint application filed under Subsection (a) not later than the 10th day after the date the application is filed with the commission or the date on which the termination takes effect, whichever is later.

(d) If the commission fails to act within the time provided by Subsection (b) or (c), the licensed authorized organization may act as if the change in premises or bingo occasions has been approved by the commission and may conduct bingo at the new premises or during the new bingo occasion until the commission acts on the application.

(e) Notwithstanding Subsection (d), the commission may issue temporary licenses to one or more licensed authorized organizations that conduct bingo at the same location as an organization that has ceased or will cease to conduct bingo, which are in addition to the number of temporary licenses each organization is entitled to under another provision of this chapter. The commission is not required to act on a joint application under Subsection (a) within the time provided by this section if the number of additional temporary licenses is sufficient to allow the other organizations at the location to conduct bingo during the licensed times of the organization that has ceased or will cease to conduct bingo.

SECTION _____. Section 2001.152, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsection (a), the commission may issue a commercial lessor license under Subsection (a)(2) or (3) only if there is not a licensed commercial lessor whose premises is located in the county in which an applicant for a license under Subsection (a)(2) or (3) proposes to locate a bingo premises. This subsection does not prohibit the renewal of an existing license. This subsection expires September 1, 2005.

SECTION _____. Section 2001.158, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) An applicant for a commercial lessor license shall pay the fees established under Subsection (a) annually. An applicant for a license or renewal of a license may obtain a license that is effective for two years by paying an amount equal to two times the amount of the annual license fee plus \$25.

SECTION _____. Section 2001.159(c), Occupations Code, is amended to read as follows:

(c) Except as provided by Section 2001.158(d), the [The] period may not exceed one year.

SECTION _____. Section 2001.214, Occupations Code, is amended to read as follows:

Sec. 2001.214. LICENSE TERM. (a) Except as provided by Subsection (b), a [A] manufacturer's or distributor's license is effective for one year unless revoked or suspended by the commission.

(b) A manufacturer or distributor may obtain a license that is effective for two years by paying an amount equal to two times the amount of the annual license fee plus \$1,000.

SECTION _____. Section 2001.218(a), Occupations Code, is amended to read as follows:

(a) Each sale or lease of bingo supplies or equipment to a license holder under this chapter must be on terms of immediate payment or on terms requiring payment not later than the 30th day after the date of actual delivery.

SECTION _____. Section 2001.307, Occupations Code, is amended to read as follows:

Sec. 2001.307. MAXIMUM LICENSE TERM. Except as otherwise provided by this chapter, a [A] license issued under this chapter may not be effective for more than one year.

SECTION _____. Subchapter G, Chapter 2001, Occupations Code, is amended by adding Sections 2001.313 and 2001.314 to read as follows:

Sec. 2001.313. REGISTRY OF APPROVED BINGO WORKERS. (a) To minimize duplicate criminal history background checks by the commission and the costs incurred by organizations and individuals, the commission shall maintain a registry of persons on whom the commission has conducted a criminal history background check and who are approved to be involved in the conduct of bingo or to act as a bingo operator.

(b) A person listed in the registry may be involved in the conduct of bingo or act as an operator at any location at which bingo is lawfully conducted.

(c) The commission shall make the registry information available to the public by publishing it on the commission's website and by responding to telephone, e-mail, and facsimile requests. This subsection does not require the commission to disclose information that is confidential by law.

(d) A person who is not listed on the registry established by this section may not act as an operator, manager, cashier, usher, caller or sales person for a licensed authorized organization.

(e) The commission may refuse to add a person's name to, or remove a person's name from, the registry established by this section if, after notice and a hearing, the person is finally determined to have:

(1) been convicted of an offense listed under section 2001.105(b);
(2) converted bingo equipment in a premises to an improper use;
(3) converted funds that are in, or that should have been in, the bingo account of any licensed authorized organization;

(4) taken any action, individually or in concert with another person, that affects the integrity of any bingo game to which this chapter applies; or

(5) acted as an operator, manager, cashier, usher, caller, or sales person for a licensed authorized organization without being listed on the registry established under this section.

(f) A licensed authorized organization shall report to the commission or its designee the discovery of any conduct on the part of a person registered or required to be registered under this section where there is substantial basis for believing that the conduct would constitute grounds for removal of the person's name from, or refusal to add the person's name to, the registry established by this section. A statement made in good faith to the commission or to an adjudicative body in connection with any such report may not be the basis for an action for defamation of character.

(g) A person who has been finally determined to have taken action prohibited by subsection (e)(2), (3), (4), or (5) cannot be listed on the registry of approved bingo workers and cannot work as a bingo worker for one year from the date of such determination. Upon expiration of the one year period, the person is eligible for listing on the registry provided a licensee subject to this chapter makes application to list the person. In such event, the commission shall take into consideration the facts and circumstances that occurred that lead to the applicable action under subparagraph (e)(2)-(5) in deciding whether to list the person on the registry.

Sec. 2001.314. IDENTIFICATION CARD FOR APPROVED BINGO WORKER. (a) The commission may require a person listed in the registry maintained under Section 2001.313 to wear an identification card to identify the person to license holders, bingo players, and commission staff while the person is on duty during the conduct of bingo. The commission by rule shall prescribe the form and content of the card.

(b) The commission shall provide the identification card and shall provide a form to be completed by a person that allows the person to prepare the identification card. The commission shall collect a reasonable charge to cover the cost of providing the card or form.

(c) An identification card required by the commission under this section to be worn by a person while on duty during the conduct of bingo must be in substantial compliance with the form and content requirements prescribed by the commission under this section.

(d) The commission may not require any other person licensed under this chapter, or a person acting on the license holder's behalf, to wear an identification card, whether or not the person is present or performing the person's duties during the conduct of bingo.

SECTION _____. Section 2001.411, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) The commission may not prohibit an operator responsible for conducting, promoting, or administering bingo from acting as a bingo caller for a licensed authorized organization during a bingo occasion. This subsection does not relieve the operator of the duty to be available to a commission employee or bingo player if required by this chapter.

SECTION _____. Subchapter I, Chapter 2001, Occupations Code, is amended by adding Section 2001.4115 to read as follows:

Sec. 2001.4115. JOINT EMPLOYMENT OF BINGO EMPLOYEES. Two or more licensed authorized organizations conducting bingo at the same premises may jointly hire bingo employees. One organization may act as the employee's employer and the other organization may reimburse the employing organization for the other organization's share of the employee's compensation and other employment-related costs. A reimbursement under this section is an authorized expense and must be made from the bingo account of the reimbursing organization.

SECTION _____. Section 2001.413, Occupations Code, is amended to read as follows:

Sec. 2001.413. ADMISSION CHARGE REQUIRED. Except as provided by Section 2001.4155, a [A] licensed authorized organization may not offer or provide to a person the opportunity to play bingo without charge.

SECTION _____. Section 2001.415, Occupations Code, is amended to read as follows:

Sec. 2001.415. ADVERTISEMENTS. (a) A person other than a licensed authorized organization, licensed commercial lessor, or the commission may not advertise bingo.

(b) A licensed authorized organization, licensed commercial lessor, or the commission may include in an advertisement or promotion the amount of a prize or series of prizes offered at a bingo occasion.

SECTION _____. Subchapter I, Chapter 2001, Occupations Code, is amended by adding Section 2001.4155 to read as follows:

Sec. 2001.4155. GIFT CERTIFICATES. (a) Nothing in this chapter prohibits a licensed authorized organization from selling or redeeming a gift certificate that entitles the bearer of the certificate to play a bingo game, including instant bingo.

(b) A licensed authorized organization that sells or redeems a gift certificate must keep adequate records relating to the gift certificate as provided by commission rule.

SECTION _____. Chapter 2001, Occupations Code, is amended by adding Subchapter I-1 to read as follows:

SUBCHAPTER I-1. UNIT ACCOUNTING

Sec. 2001.431. DEFINITIONS. In this subchapter:

(1) "Unit" means two or more licensed authorized organizations that conduct bingo at the same location joining together to share revenues, authorized expenses, and inventory related to bingo operations.

(2) "Unit accounting" means a method by which licensed authorized organizations that are members of a unit account for the sharing of revenues, authorized expenses, and inventory related to bingo operations.

(3) "Unit accounting agreement" means a written agreement by all the licensed authorized organizations that are members of a unit that contains, at a minimum:

(A) the taxpayer name and number of each licensed authorized organization that is a member of the unit;

(B) the method by which the net proceeds of the bingo operations of the unit will be apportioned among the members of the unit;

(C) the name of the unit manager or designated agent of the unit; and

(D) the methods by which the unit may be dissolved and by which one or more members of the unit may withdraw from participation in the unit, including the distribution of funds, records, and inventory and the allocation of authorized expenses and liabilities on dissolution or withdrawal of one or more members of the unit.

(4) "Unit manager" means an individual licensed under this subchapter to be responsible for the revenues, authorized expenses, and inventory of a unit.

Sec. 2001.432. FORMING ACCOUNTING UNIT. (a) Two or more licensed authorized organizations may form and operate a unit as provided by this subchapter by:

(1) executing a unit accounting agreement; and

(2) stating in the unit accounting agreement whether the unit will use:

(A) a unit manager; or

(B) a designated agent.

(b) More than one unit may be formed at a single location. A licensed authorized organization may not be a member of more than one unit.

(c) This subchapter does not require a licensed authorized organization to join a unit. Except as provided by Subsection (d), whether to join or withdraw from a unit is at the discretion of each licensed authorized organization.

(d) The members of a unit may determine whether to allow another licensed authorized organization to join the unit. The terms of the withdrawal of a member from the unit are governed by the unit accounting agreement.

Sec. 2001.433. APPLICABILITY OF CHAPTER. A licensed authorized organization that uses unit accounting is subject to the other provisions of this chapter to the extent the provisions are applicable and are not inconsistent with this subchapter.

Sec. 2001.434. CONDUCT OF BINGO. (a) Each licensed authorized organization that is a member of a unit shall conduct its bingo games separately from the bingo games of the other members of the unit.

(b) A unit may purchase or lease bingo supplies and equipment in the same manner as a licensed authorized organization.

(c) A licensed distributor may sell or lease bingo supplies or equipment to a unit in the same manner as the distributor sells or leases bingo supplies and equipment to a licensed authorized organization.

Sec. 2001.435. UNIT ACCOUNTING. (a) A unit:

(1) shall establish and maintain one checking account designated as the unit's bingo account;

(2) shall maintain one inventory of bingo supplies and equipment for use in the bingo operations of members of the unit; and

(3) may maintain an interest-bearing savings account designated as the unit's bingo savings account.

(b) Each member of a unit shall deposit into the unit's bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes under Sections 2001.420(a) and (b). The deposit shall be made not later than the next business day after the day of the bingo occasion on which the receipts were obtained.

(c) All authorized expenses and distributions of the unit and its members shall be paid from the unit's bingo checking account.

Sec. 2001.436. DISBURSEMENT OF FUNDS BY DISSOLVED UNIT. (a) Sections 2001.457(a) and (b) apply to a unit formed under this subchapter. For purposes of this subchapter, the requirements of Sections 2001.457(a) and (b) that are applicable to a licensed authorized organization shall be applied to a unit.

(b) A unit that has dissolved for any reason and has unexpended bingo funds shall disburse those funds to the bingo account of each member of the unit before the end of the next calendar quarter after the calendar quarter in which the unit dissolves.

(c) For purposes of the application of Sections 2001.457(a) and (b) to a unit under this section:

(1) "adjusted gross receipts" means gross receipts less the amount of cost of goods purchased by a unit and prizes paid in the preceding quarter; and

(2) "cost of goods purchased by a unit" means the cost of bingo paper and pull-tab bingo tickets purchased by the unit and payments to distributors for electronic card-minding devices.

Sec. 2001.437. UNIT MANAGER; LICENSE. (a) If the unit accounting agreement of a unit states that a unit manager is responsible for compliance with commission rules and this chapter, the unit manager is responsible for:

(1) the filing of one quarterly report for the unit on a form prescribed by the commission; and

(2) the payment of taxes and fees and the maintenance the bingo inventory and financial records of the unit.

(b) A unit with a unit manager shall notify the commission of the name of the unit manager and immediately notify the commission of any change of unit manager.

(c) A person may not provide services as a unit manager to licensed authorized organizations that form a unit unless the person holds a unit manager license under this subchapter. A person designated as an agent under Section 2001.438(b) is not a unit manager on account of that designation for purposes of this section.

(d) An applicant for a unit manager license must file with the commission a written application on a form prescribed by the commission that includes:

(1) the name and address of the applicant;

(2) information regarding whether the applicant, or any officer, director, or employee of the applicant, has been convicted of a felony, criminal fraud, gambling or gambling-related offense, or crime of moral turpitude; and

(3) any other information required by commission rule.

(e) The commission by rule shall establish an annual license fee for a unit manager license in an amount reasonable to defray administrative costs plus any costs incurred to conduct a criminal background check.

(f) A person who holds a unit manager license shall post a bond or other security pursuant to Section 2001.514.

(g) A person is not eligible for a unit manager license under this subchapter if the person, or any officer, director, or employee of the person:

(1) has been convicted of a felony, criminal fraud, a gambling or gambling-related offense, or crime of moral turpitude, if less than 10 years has elapsed since the termination of a sentence, parole, or community supervision served for the offense;

(2) is an owner, officer, or director of a licensed commercial lessor, is employed by a licensed commercial lessor, or is related to a licensed commercial lessor within the second degree by consanguinity or affinity, unless the holder of the license is a licensed authorized organization or an association of licensed authorized organizations; or

(3) holds or is listed on another license under this chapter, unless the holder of the license is a licensed authorized organization or an association of licensed authorized organizations.

(h) A unit manager must complete the training required by Section 2001.107.

Sec. 2001.438. AGREEMENT WITHOUT UNIT MANAGER. (a) This section applies to a unit if the unit accounting agreement for the unit:

(1) does not state that a unit manager will be responsible for compliance with the rules of the commission and this chapter; or

(2) states that the unit will use a designated agent.

(b) The unit shall designate with the commission an agent who will be responsible for providing the commission access to all inventory and financial records of the unit on request of the commission.

(c) The agent designated under Subsection (b) may not:

(1) hold or be listed on another license issued under this chapter, unless the holder of the license is a licensed authorized organization or an association of licensed authorized organizations; or

(2) be an owner, officer, or director of a licensed commercial lessor, be employed by a licensed commercial lessor, or be related to a licensed commercial lessor within the second degree by consanguinity or affinity, unless the holder of the license is a licensed authorized organization or an association of licensed authorized organizations.

(d) The unit shall immediately notify the commission of any change in the agent designated under Subsection (b).

(e) The designated agent must complete the training required by Section 2001.107.

(f) Each licensed authorized organization that is a member of the unit shall be jointly and severally liable for:

(1) compliance with the requirements of this subchapter and the rules of the commission relating to the filing of required reports;

(2) the maintenance of bingo inventory and financial records; and

(3) the payment of taxes, fees, and any penalties imposed for a violation of this subchapter or commission rules related to the operations of the unit.

(g) Each licensed authorized organization that is a member of the unit may be made a party to any administrative or judicial action relating to the enforcement of this subchapter or the rules of the commission pertaining to the operation of the unit.

Sec. 2001.439. TRUST AGREEMENT. (a) Notwithstanding any other provision of this subchapter, a unit may be formed pursuant to a trust agreement between two or more licensed authorized organizations that conduct bingo at the same location. The agreement must:

(1) designate one of the organizations as the trustee;

(2) designate a person who will carry out the duties described by Section 2001.438(b);

(3) specify the method by which the unit will comply with the requirements of Section 2001.436(a); and

(4) state that the trustee is responsible for compliance with the rules of the commission and this chapter.

(b) The commission by rule may prohibit a person from serving as a unit manager or as a designated agent for a unit that does not use a unit manager if the person has failed to comply with the duties required of the person as a unit manager or designated agent.

(c) The commission may prohibit a person who serves as a designated agent that is listed on a license under this chapter, including having been approved by the commission to work in the bingo operations of a licensed authorized organization or as an operator, from holding or being listed on any license or from being approved to work in the bingo operations of any licensed authorized organization or to serve as an operator if the person has failed to comply with the duties required of the person as a unit manager or designated agent.

SECTION _____. Section 2001.451, Occupations Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) A licensed authorized organization shall deposit in the bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes under Sections 2001.420(a) and (b). Except as provided by Subsection (b-1), a [A] deposit must be made not later than the next business day after the day of the bingo occasion on which the receipts were obtained.

(b-1) A licensed authorized organization may deposit funds derived from the conduct of bingo that are paid through a debit card transaction in the bingo fund not later than 72 hours after the transaction.

SECTION _____. Section 2001.454, Occupations Code, is amended to read as follows:

Sec. 2001.454. USE OF NET PROCEEDS FOR CHARITABLE PURPOSES. (a) A licensed authorized organization shall devote to the [a] charitable purposes of the organization [purpose] its net proceeds of bingo and any rental of premises.

(b) Except as otherwise provided by law, the [The] net proceeds derived from bingo and any rental of premises are dedicated to the [a] charitable purposes of the organization [purpose] only if directed to a cause, deed, or activity that is consistent

with the federal tax exemption the organization obtained under 26 U.S.C. Sec. 501 and under which the organization qualifies as a nonprofit organization as defined by Section 2001.002[‡]

[¶] (1) benefits an indefinite number of needy or deserving persons in this state by:

[¶] (A) enhancing their opportunity for religious or educational advancement;

[¶] (B) relieving them from disease, suffering, or distress;

[¶] (C) contributing to their physical well being;

[¶] (D) assisting them in establishing themselves in life as worthy and useful citizens; or

[¶] (E) increasing their comprehension of and devotion to the principles on which this nation was founded and enhancing their loyalty to their government; or

[¶] (2) initiates, performs, or fosters worthy public works in this state or enables or furthers the erection or maintenance of public structures in this state]. If the organization is not required to obtain a federal tax exemption under 26 U.S.C. Sec. 501, the organization's net proceeds are dedicated to the charitable purposes of the organization only if directed to a cause, deed, or activity that is consistent with the purposes and objectives for which the organization qualifies as an authorized organization under Section 2001.002.

SECTION _____. Section 2001.458(a), Occupations Code, is amended to read as follows:

(a) An item of expense may not be incurred or paid in connection with the conduct of bingo except an expense that is [those expenses that are] reasonable or necessary to conduct bingo, including an expense [and necessarily expended] for:

(1) advertising, including the cost of printing bingo gift certificates;

(2) security;

(3) repairs to premises and equipment;

(4) bingo supplies and equipment;

(5) prizes;

(6) stated rental or mortgage and insurance expenses;

(7) bookkeeping, legal, or accounting services related to bingo;

(8) fees [in amounts authorized by the commission] for callers, cashiers, ushers, janitorial services, and utility supplies and services; [and]

(9) license fees;

(10) attending a bingo seminar or convention required under section 2001.107; and

(11) debit card transaction fees.

SECTION _____. Section 2001.459(a), Occupations Code, is amended to read as follows:

(a) The following items of expense incurred or paid in connection with the conduct of bingo must be paid from an organization's bingo account:

(1) advertising, including the cost of printing bingo gift certificates;

(2) security during a bingo occasion;

(3) the purchase or repair of bingo supplies and equipment;

(4) prizes, other than authorized cash prizes;

- (5) stated rental expenses;
- (6) bookkeeping, legal, or accounting services;
- (7) fees for callers, cashiers, and ushers;
- (8) janitorial services;
- (9) license fees; and
- (10) payment for services provided by a system service provider.

SECTION _____. Section 2001.504(a), Occupations Code, is amended to read as follows:

(a) A tax or fee authorized or imposed under this subchapter is due and is payable by the license holder or a person conducting bingo without a license to the commission quarterly on or before the 25th [15th] day of the month succeeding each calendar quarter.

SECTION _____. Section 2001.602(b), Occupations Code, is amended to read as follows:

(b) In determining the amount of the penalty, the [executive] director shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts to correct the violation; and
- (5) any other matter that justice may require.

SECTION _____. Sections 2001.603(a) and (b), Occupations Code, are amended to read as follows:

(a) If, after investigating a possible violation and the facts surrounding that possible violation, the [executive] director determines that a violation has occurred, the [executive] director may issue a violation report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty be imposed on the person alleged to have committed the violation, and recommending the amount of the proposed penalty. The [executive] director shall base the recommended amount of the proposed penalty on the seriousness of the violation determined by consideration of the factors set out in Section 2001.602(b).

(b) Not later than the 14th day after the date on which the report is issued, the [executive] director shall give written notice of the report to the person alleged to have committed the violation.

SECTION _____. Section 2001.604, Occupations Code, is amended to read as follows:

Sec. 2001.604. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person may:

(1) accept the recommendation of the [executive] director, including the recommended administrative penalty; or

(2) make a written request for a hearing on the determination.

(b) If the person accepts the [executive] director's determination, the [executive] director by order shall approve the determination and impose the proposed penalty.

SECTION _____. Section 2001.605(a), Occupations Code, is amended to read as follows:

(a) If the person timely requests a hearing or does not respond to the notice in the time provided by Section 2001.604(a), the [executive] director shall set a hearing and give notice of the hearing to the person.

SECTION _____. Section 2001.606, Occupations Code, is amended to read as follows:

Sec. 2001.606. DECISION BY [EXECUTIVE] DIRECTOR. (a) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the [executive] director by order:

(1) may find that a violation has occurred and may impose an administrative penalty; or

(2) may find that a violation has not occurred.

(b) The [executive] director shall give notice of the order to the person. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty imposed;

(3) a statement of the right of the person to judicial review of the order; and

(4) other information required by law.

SECTION _____. Sections 2001.607(b) and (c), Occupations Code, are amended to read as follows:

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account;

or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the [executive] director by certified mail.

(c) On receipt of a copy of the affidavit as provided by Subsection (b)(2), the [executive] director may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

SECTION _____. Section 2001.608, Occupations Code, is amended to read as follows:

Sec. 2001.608. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the [executive] director may refer the matter to the attorney general for collection of the penalty.

SECTION _____. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3105 to read as follows:

Sec. 151.3105. BINGO EQUIPMENT PURCHASED BY CERTAIN ORGANIZATIONS. Bingo equipment, as defined by Section 2001.002, Occupations Code, is exempted from the taxes imposed by this chapter if the bingo equipment is:

(1) purchased by an organization licensed to conduct bingo under Chapter 2001, Occupations Code, that is exempt from the payment of federal income taxes under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt organization under Section 501(c)(3), (4), (8), (10), or (19), Internal Revenue Code of 1986, as amended; and

(2) used exclusively to conduct bingo authorized under Chapter 2001, Occupations Code.

SECTION _____. Section 2001.409(b), Occupations Code is repealed.

SECTION _____. (a) The changes in law made by this Act governing eligibility of a person for a license apply only to the issuance or renewal of a license by the commission under Chapter 2001, Occupations Code, as amended by this Act, on or after the effective date of this Act. A license issued by the commission under those laws before the effective date of this Act is governed by the applicable licensing requirements in effect when the license was last issued or renewed until the license expires or is renewed as provided by Chapter 2001, Occupations Code, as amended by this Act.

(b) The change in law made by this Act to Section 2001.457, Occupations Code, applies to the charitable disbursements made by a licensed authorized organization beginning with disbursements for the second quarter of 2004. A charitable disbursement made by a licensed authorized organization for a quarter before the second quarter of 2004 is governed by the law in effect immediately before the effect date of this Act, and the former law is continued in effect for that purpose.

(c) An authorized organization licensed to conduct bingo before the effective date of this Act may renew its license, notwithstanding that the organization has not been in existence for the time required under a rule of the commission adopted under section 2001.101, Occupations Code, if the organization meets all other requirements for the renewal of the license.

The floor amendment was read and was adopted by a viva voce vote.

VOTE RECONSIDERED

On motion of Senator Ellis and by unanimous consent, the vote by which Floor Amendment No. 14 as amended was adopted was reconsidered.

Question — Shall Floor Amendment No. 14 as amended to **CSSB 1952** be adopted?

Senator Ellis offered the following amendment to the amendment:

Floor Amendment No. 14B

Amend Floor Amendment No. 14 as amended to **CSSB 1952** as follows:

On page 1, line 20, delete ":" and insert "such as: "elect,"".

The amendment to the amendment was read and was adopted by a viva voce vote.

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

Senator Gallegos again offered the following amendment to the bill:

Floor Amendment No. 42

Amend **CSSB 1952** by adding the following appropriately numbered article to the bill and renumbering remaining articles of the bill as appropriate:

ARTICLE ____ . REGULATION OF CERTAIN FIRE PROTECTION SPRINKLER SYSTEM JOURNEYMEN AND APPRENTICES

SECTION ____ .01. Section 1, Article 5.43-3, Insurance Code, is amended by amending Subdivision (12) and adding Subdivisions (15) and (16) to read as follows:

(12) "License" means the document issued to a responsible managing employee or a fire protection sprinkler system contractor employee authorizing same to engage in the fire protection sprinkler system business in this state.

(15) "Fire protection sprinkler system apprentice" means a person who:

(A) installs, alters, maintains, services, or inspects a fire protection sprinkler system or any part of the system as an employee of a fire protection sprinkler system contractor; and

(B) has less than five years of experience as an employee of a contractor.

(16) "Fire protection sprinkler system journeyman" means a person who:

(A) installs, alters, maintains, services, or inspects a fire protection sprinkler system or any part of the system as an employee of a fire protection sprinkler system contractor; and

(B) has at least five years of experience as an employee of a contractor.

SECTION ____ .02. Section 2(b), Article 5.43-3, Insurance Code, is amended to read as follows:

(b) This article does not apply to:

(1) an employee of the United States, this state, or any political subdivision of this state who acts as a fire protection sprinkler system contractor for the employing governmental entity;

(2) the plan, sale, installation, maintenance, or servicing of a fire protection sprinkler system in any property owned by the United States or this state;

(3) a person or organization acting under court order as authorization;

(4) a person or organization that sells or supplies products or materials to a registered fire protection sprinkler system contractor;

(5) an installation, maintenance, or service project for which the total contract price for labor, materials, and all other services is less than \$100, if:

(A) the project is not a part of a complete or more costly project, whether the complete project is to be undertaken by one or more fire protection sprinkler system contractors; or

(B) the project is not divided into contracts of less than \$100 for the purpose of evading this article;

(6) a registered professional engineer acting solely in such professional capacity;

(7) a regular employee of a registered fire protection sprinkler system contractor; [or]

(8) an owner or lessee of property that installs a fire protection sprinkler system on the owned or leased property for its own use or for the use by family members and does not offer such property for sale or lease within one year after installation of a fire protection sprinkler system; or

(9) an employee of a fire protection sprinkler system contractor who installs, alters, maintains, services, or inspects fire protection sprinkler systems only in one-family or two-family dwellings as provided by the 2002 edition of the National Fire Protection Association (NFPA) Standard 13D.

SECTION ____ .03. Section 3(a), Article 5.43-3, Insurance Code, is amended to read as follows:

(a) The board shall administer this article and may issue rules necessary to its administration through the State Fire Marshal. Under rules adopted under this subsection, the board shall operate [may create] a specialized licensing or registration program for fire protection sprinkler system contractors and for journeymen and apprentices of those contractors.

SECTION ____ .04. Section 4, Article 5.43-3, Insurance Code, is amended by adding Subsections (c-1), (c-2), and (d-1) and amending Subsection (d) to read as follows:

(c-1) Each employee of a fire protection sprinkler system contractor who installs, alters, maintains, services, or inspects a fire protection sprinkler system and who has at least five years of documented experience as a fire protection sprinkler system employee or apprentice shall obtain a journeyman license. The board shall issue the license conditioned on the successful completion of the examination requirement and other requirements prescribed by the rules adopted under this article. Each applicant for a journeyman license must submit with the application a nonrefundable examination fee in an amount not to exceed \$50.

(c-2) Each employee of a fire protection sprinkler system contractor who installs, alters, maintains, services, or inspects fire protection sprinkler systems and who has less than five years of experience as an employee of a fire protection sprinkler system contractor must register with the board as an apprentice. To be eligible for registration, the applicant must:

(1) meet the requirements prescribed by the rules adopted under this article; and

(2) submit a nonrefundable registration fee in an amount not to exceed \$15.

(d) An initial contractor [A] certificate of registration and an initial managing employee [a] license are valid for a period of one year from the date of issuance [issue] and are renewable [annually] on payment of the renewal [annual] fee; provided, however, that the initial certificates of registration or licenses issued on or after September 1, 1983, may be issued for periods of less than one year and the annual fee shall be prorated proportionally].

(d-1) A journeyman license and an apprentice certificate of registration are valid for one year from the date of issuance and are renewable annually on the anniversary of the date of issuance on payment of the applicable renewal fee. The renewal fee for a journeyman license is \$20. The renewal fee for an apprentice certificate of registration is \$15.

SECTION ____ .05. Sections 5(a) and (c), Article 5.43-3, Insurance Code, are amended to read as follows:

(a) The board shall not issue a contractor certificate of registration under this article unless the applicant files with the board evidence of a general liability insurance policy that includes products and completed operations coverage. The limits of insurance coverage required by this section shall be in an amount not less than \$100,000 combined single limits for bodily injury and property damage for each occurrence and not less than \$300,000 aggregate for all occurrences per policy year, unless the board increases or decreases the amounts under Section 7 of this article. The policy shall be conditioned to pay on behalf of the insured those amounts that the insured is legally obligated to pay as damages because of bodily injury and property damage caused by an occurrence involving the insured or the insured's servant, officer, agent, or employee in the conduct of any business registered under this article.

(c) Failure to maintain liability insurance required under this section constitutes grounds for the denial, suspension, or revocation of a contractor certificate of registration issued under this article after notice and opportunity for hearing.

SECTION ____ .06. Section 5A(a), Article 5.43-3, Insurance Code, is amended to read as follows:

(a) Each renewal of a license or certificate of registration issued under this article is valid for a period of two years. The managing employee license fee or contractor registration fee for each year of the two-year period is payable on renewal.

SECTION ____ .07. Section 5B, Article 5.43-3, Insurance Code, is amended to read as follows:

Sec. 5B. EXAMINATION. (a) Not later than the 30th day after the day on which an examination is administered under this article, the board shall send notice to each examinee of the results of the examination.

(b) If an examination is graded or reviewed by a national testing service, the board shall send notice to each examinee of the results of the examination within two weeks after the date on which the board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall send notice to each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the examination administered under this article, the board shall send to the person an analysis of the person's performance on the examination.

(d) A person who fails the examination for a fire protection sprinkler system journeyman license may not retake the examination before the 90th day after the date of the initial examination.

SECTION ____ .08. Section 5C, Article 5.43-3, Insurance Code, is amended to read as follows:

Sec. 5C. CONTINUING EDUCATION. (a) Except as provided by Subsection (b) of this section, the [The] board may adopt procedures for certifying and may certify continuing education programs. Participation in the programs is voluntary.

(b) The board shall adopt procedures for certifying and shall certify continuing education programs for fire protection sprinkler system journeymen. A journeyman must successfully complete six hours of continuing education courses on the laws and codes governing fire protection sprinkler systems to be eligible to renew a license under this article.

SECTION ____09. Section 8, Article 5.43-3, Insurance Code, is amended to read as follows:

Sec. 8. PROHIBITED ACTS. A person or organization may not:

(1) plan, sell, install, maintain, or service a fire protection sprinkler system without a valid certificate of registration;

(2) act as a fire protection sprinkler system contractor under a certificate of registration without having at least one full-time employee who holds a valid responsible managing employee license; provided, however, that a person or organization with a current certificate of registration may act as a fire protection sprinkler system contractor for 30 days after the death or dissociation of its licensed responsible managing employee or for such longer period as may be approved by the board pursuant to the rules adopted hereunder;

(3) act as a responsible managing employee, journeyman, or apprentice for a fire protection sprinkler system contractor without a valid license or certificate of registration, as applicable;

(4) obtain or attempt to obtain a certificate of registration or license by fraudulent representation; or

(5) plan, sell, install, maintain, or service a fire protection sprinkler system in violation of this article or the rules adopted under this article.

SECTION ____10. (a) Not later than January 1, 2004, the Texas Department of Insurance and the state fire marshal shall adopt rules and establish the procedures and examination requirements necessary to implement the licensing of fire protection sprinkler system journeymen and the registration of fire protection sprinkler system apprentices under Article 5.43-3, Insurance Code, as amended by this article.

(b) A fire protection sprinkler system journeyman is not required to hold a license under Article 5.43-3, Insurance Code, as amended by this article, before July 1, 2004.

(c) A fire protection sprinkler system apprentice is not required to register under Article 5.43-3, Insurance Code, as amended by this article, before July 1, 2004.

(d) A fire protection sprinkler system employee who has at least five years of experience on the effective date of this article and who applies for a fire protection sprinkler system journeyman license within six months of the effective date of this article is not required to pass a license examination under Article 5.43-3, Insurance Code, as amended by this article, to receive a journeyman license.

SECTION ____11. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for this article to have immediate effect, this article takes effect September 1, 2003.

The floor amendment was again read and failed of adoption by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 64

Amend **CSSB 1952** by adding the following appropriately numbered ARTICLE of the bill and renumbering subsequent ARTICLES accordingly:

ARTICLE _____. ORGANIZATION OF CERTAIN STATE AGENCIES;

TRANSFER OF CERTAIN FUNCTIONS

PART 1. CREATION OF LEGISLATIVE INFORMATION SERVICES

BOARD; ABOLITION OF TEXAS LEGISLATIVE COUNCIL

AND TRANSFER OF ITS FUNCTIONS

SECTION _____.01. Subtitle C, Title 3, Government Code, is amended by adding Chapter 327 to read as follows:

CHAPTER 327. LEGISLATIVE INFORMATION SERVICES BOARD

Sec. 327.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Legislative Information Services Board.
- (2) "Director" means the director of the board.

Sec. 327.002. CREATION. The Legislative Information Services Board is an agency of the legislative branch of state government.

Sec. 327.003. LEGISLATIVE INFORMATION SERVICES BOARD. (a) The board consists of:

- (1) the lieutenant governor;
- (2) the speaker of the house of representatives;
- (3) the chairs of the senate and house administration committees;
- (4) five other senators from various areas of the state appointed by the lieutenant governor; and
- (5) five other members of the house of representatives from various areas of the state appointed by the speaker.

(b) The lieutenant governor and the speaker of the house of representatives serve alternate terms as the chairman and vice chairman of the board. The terms are for two years and expire on February 1 of each odd-numbered year.

(c) Members of the board serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in attending meetings and performing official functions.

(d) Actual and necessary expenses are paid from funds appropriated to the board.

Sec. 327.004. DIRECTOR. (a) The board shall appoint a director to serve at the pleasure of the board.

(b) The board shall set the salary of the director.

Sec. 327.005. PERSONNEL. (a) The director, with the approval of the board, may employ professional and clerical personnel.

(b) The board shall set the salaries of the personnel employed by the director.

Sec. 327.006. GIFTS AND GRANTS. (a) The board may accept gifts, grants, and donations from any organization described in Section 501(c)(3), Internal Revenue Code of 1986, for the purposes of funding any activity under this chapter.

(b) All gifts, grants, and donations must be accepted in an open meeting by a majority of the voting members of the board and reported in the public record of the board with the name of the donor and purpose of the gift, grant, or donation.

Sec. 327.007. DUTIES. The board shall provide computer support services to the legislative branch of state government, including:

- (1) installing and maintaining computer equipment;
- (2) testing new software and hardware;
- (3) developing custom software;
- (4) maintaining a local area network; and
- (5) providing computer training and assistance.

Sec. 327.008. ELECTRONIC AVAILABILITY OF LEGISLATIVE INFORMATION THROUGH THE INTERNET. (a) In this section:

(1) "Internet" means the largest nonproprietary nonprofit cooperative public computer network, popularly known as the Internet.

(2) "Legislative information" means:

(A) a list of all the members of each house of the legislature;

(B) a list of the committees of the legislature and their members;

(C) the full text of each bill as filed and as subsequently amended, substituted, engrossed, or enrolled in either house of the legislature;

(D) the full text of each amendment or substitute adopted by a legislative committee for each bill filed in either house of the legislature;

(E) the calendar of each house of the legislature, the schedule of legislative committee hearings, and a list of the matters pending on the floor of each house of the legislature;

(F) detailed procedural information about how a bill filed in either house of the legislature becomes law, including detailed timetable information concerning the times under the constitution or the rules of either house when the legislature may take certain actions on a bill;

(G) the district boundaries or other identifying information for the following types of districts in Texas:

- (i) house of representatives districts;
- (ii) senate districts;
- (iii) State Board of Education districts; and
- (iv) United States congressional districts; and

(H) other information related to the legislative process that in the board's opinion should be made available through the Internet.

(b) The board, to the extent it considers it to be feasible and appropriate, may make legislative information available to the public through the Internet.

(c) The board may make available to the public through the Internet any documentation that describes the electronic digital formats of legislative information.

(d) The access to legislative information provided for under this section:

(1) is in addition to the public's access to the information through other electronic or print distribution of the information;

(2) does not alter, diminish, or relinquish any copyright or other proprietary interest or entitlement of the State of Texas or a private entity under contract with the state; and

(3) is subject to Section 327.009.

Sec. 327.009. COMPUTER ACCESS, INFORMATION, AND USE. (a) The board shall consider each application for direct access to a computer under its control in which confidential information is stored or processed or that is connected with another computer in which confidential information is stored or processed and solely shall determine whether or not to permit direct access by the applicant. Direct access to such a computer may not be permitted unless protection of confidential information is ensured.

(b) If public information of the board is stored in a computer-readable form, the board has exclusive authority to determine the form in which the information will be reproduced for the requestor of the information.

(c) Notwithstanding Subchapter F, Chapter 552, the board has exclusive authority to determine the charge for direct access to a computer under its control and the charge for information reproduced for a requestor.

(d) The board may consider the needs of persons with disabilities when making decisions regarding the formats in which information is made available under this chapter.

Sec. 327.010. COMPUTER SECURITY; PENALTY. (a) A person commits an offense if the person intentionally or knowingly gains access to information stored or maintained by a computer under the control of the board and the person is not authorized by the board to have access to that information.

(b) A person commits an offense if the person intentionally, knowingly, or recklessly damages, destroys, deletes, or alters or impairs access to or use of information stored or maintained by a computer under the control of the board and the person is not authorized by the board to do so.

(c) Subsection (b) does not apply to an interruption of utility service or other service that causes the damage, destruction, deletion, or alteration of or impairment of access to or use of the information unless the interruption was intended to have that result.

(d) An offense under this section is a Class A misdemeanor.

SECTION ____ .02. The following laws are repealed:

- (1) Section 276.008, Election Code;
- (2) Chapter 323, Government Code;
- (3) Section 2053.004, Government Code; and
- (4) Section 6.14, Tax Code.

PART 2. TRANSFER OF FINANCIAL AUDIT FUNCTIONS FROM
STATE AUDITOR TO LEGISLATIVE BUDGET BOARD

SECTION ____ .03. Chapter 322, Government Code, is amended by adding Section 322.002 to read as follows:

Sec. 322.002. DEFINITIONS. In this chapter:

- (1) "Board" means the Legislative Budget Board.

(2) "Department" includes every department, agency, board, bureau, institution, or commission of the state.

SECTION ____ .04. Chapter 322, Government Code, is amended by adding Sections 322.015 through 322.026 to read as follows:

Sec. 322.015. FINANCIAL AND COMPLIANCE AUDITS: POWERS AND DUTIES. (a) The board shall conduct financial audits of all departments, including institutions of higher education, as specified in the audit plan required under Subsection (c). The board may conduct an audit or investigation of any entity receiving funds from the state.

(b) The board shall conduct the audits in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, the Governmental Accounting Standards Board, the United States General Accounting Office, or other professionally recognized entities that prescribe auditing standards.

(c) The board shall devise an audit plan for the state for each fiscal year. In the plan, the board shall consider recommendations concerning coordination of agency functions made by representatives of the Performance Review Commission. The board shall also consider the extent to which a department has received a significant increase in appropriations, including a significant increase in federal or other money passed through to the department, and shall review procurement activities for compliance with Section 2161.123. The plan shall provide for the auditing of federal programs at least once in each fiscal biennium and shall ensure that audit requirements of all bond covenants and other credit or financial agreements are satisfied.

(d) At any time during an audit or investigation, the board may require the assistance of the administrative head, official, auditor, accountant, or other employees of the entity being audited or investigated.

(e) The board is entitled to access to all of the books, accounts, confidential or unconfidential reports, vouchers, or other records of information in any department or entity subject to audit, including access to all electronic data.

(f) The board has access to information and data the release of which is restricted under federal law only with the approval of the appropriate federal administrative agency. The board shall have access to copyrighted or restricted information obtained by the office of the comptroller under subscription agreements and used in the preparation of economic estimates only for audit purposes.

(g) The board may conduct compliance and financial audits as defined by Sections 322.016 and 322.017 and specified in the audit plan.

(h) To the extent that the performance of the powers and duties of the board under law is not impeded, the board shall make reasonable efforts to coordinate requests for employee assistance under Subsection (d) or requests for access to books, accounts, vouchers, records, or data under Subsection (e) or (f) so as not to hinder the daily operations of the audited entity.

(i) The board may not conduct audits of private entities concerning collection or remittance of taxes or fees to the state if the entity is subject to audit by another state agency for the taxes or fees.

(j) If the board determines that a change in an accounting system is necessary, the board shall consider the present system of books, records, accounts, and reports to ensure that the transition will be gradual and that the past and present records will be coordinated into the new system.

Sec. 322.016. COMPLIANCE AUDIT. A compliance audit is an audit to determine:

(1) whether the audited entity has obligated, expended, received, and used state funds in accordance with the purpose for which those funds have been appropriated or otherwise authorized by law;

(2) whether the audited entity has obligated, expended, received, and used state funds in accordance with any limitations, restrictions, conditions, or mandatory directions imposed by law on those obligations, expenditures, receipts, or uses;

(3) in the case of a local or private entity or agency, whether the records, books, and accounts of the audited entity fairly and accurately reflect the entity's financial and fiscal operations relating to the obligation, receipt, expenditure, and use of state funds or funds represented as being collected for a state purpose;

(4) whether the collections of state revenues and receipts by the audited entity are in accordance with applicable laws and regulations; and

(5) whether money or negotiable securities or similar assets handled by the audited entity on behalf of the state or received from the state and held in trust by the audited entity have been properly and legally administered.

Sec. 322.017. FINANCIAL AUDIT. A financial audit is an audit to determine:

(1) in the case of the state or a department, whether the records, books, and accounts of the audited entity accurately reflect its financial and fiscal operations;

(2) whether the audited entity is maintaining effective accounting control over revenues, obligations, expenditures, assets, and liabilities;

(3) whether the accounting and record-keeping of collections of state revenues and receipts by the audited entity are fair, accurate, and in accordance with law;

(4) whether the accounting and record-keeping of money or negotiable securities or similar assets handled by the audited entity on behalf of the state or received from the state and held in trust by the audited entity are proper, accurate, and in accordance with law; and

(5) whether financial reports of the audited entity are fairly presented.

Sec. 322.018. FINANCIAL AND COMPLIANCE AUDIT REPORTS. (a) The board shall prepare a written report for each financial or compliance audit conducted by the board.

(b) The written report must include a management letter with comments about internal controls, compliance with state or federal laws, and recommendations for improving operations or program effectiveness, as applicable. The report must also include an opinion on fair presentation of financial statements if the board considers an opinion to be necessary.

(c) The board shall file a copy of each report prepared under this section with:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives;

(4) the secretary of state;

(5) the Legislative Reference Library;

(6) each member of the governing body and the administrative head of each entity that is the subject of the report; and

(7) members of the legislature on a committee with oversight responsibility for the entity or program that is the subject of the report.

(d) The board shall maintain a complete file containing:

(1) copies of each audit report; and

(2) audit work papers and other evidence relating to the work of the board.

(e) The board shall maintain the files required by Subsection (d) for at least eight years after the date on which the information is filed.

(f) Each audited department or entity shall report on the manner in which the department or entity addressed the findings and recommendations that are included in a report prepared by the board under this section. The board shall prescribe the form and schedule for a report by the department or entity under this subsection.

(g) If a department or entity does not implement a change recommended by the board's report, the department or entity shall file a report with the persons specified by Subsection (c). The report must:

(1) identify the recommendation the department or entity did not implement; and

(2) state the reason the department or entity did not implement the recommendation.

Sec. 322.019. IMPROPER PRACTICES AND ILLEGAL TRANSACTIONS.

(a) If in the course of an audit the board finds evidence of improper practices of financial administration, inadequate fiscal records, or uneconomical use of resources, the board, after consulting with the head of the department being audited, shall immediately report the evidence to the governor and to the administrative head and the chairman of the governing body of the affected department.

(b) If in the course of an audit the board finds evidence of an illegal transaction, the board, after consulting with the head of the department, shall immediately report the transaction to the governor and the appropriate legal authority.

(c) Immediately after receiving a report alleging improper practices of financial administration or uneconomical use of resources, the board shall review the report and shall consult with and may hold hearings with the administrative head and the chairman of the governing body of the affected department regarding the report.

(d) If the administrative head or the governing body of the affected department refuses to make the changes recommended by the board at a hearing under Subsection (c) or refuses to provide any additional information or reports requested, the board shall report the refusal to the legislature.

Sec. 322.020. REVIEW AND OVERSIGHT OF FUNDS AND ACCOUNTS RECEIVING COURT COSTS. (a) The board may review each fund and account into which money collected as a court cost is directed by law to be deposited to determine whether:

(1) the money is being used for the purpose for which the money is collected; and

(2) the amount of the court cost is appropriate, considering the purpose for which the cost is collected.

(b) The board may perform reviews under this section as specified in the audit plan developed under Section 322.015.

(c) The board shall make the findings of a review performed under this section available to the public and shall report the findings to the governor, the chief justice of the supreme court, and the presiding judge of the court of criminal appeals. The report may include the board's recommendations for legislation or policy changes.

Sec. 322.021. SUBPOENAS. (a) The board may subpoena witnesses or any books, records, or other documents reasonably necessary to conduct an examination under this chapter.

(b) Each subpoena must be signed by the chairman or the secretary of the board.

(c) On the request of the chairman or the secretary of the board, the sergeant at arms or an assistant sergeant at arms of either house of the legislature or any peace officer shall serve the subpoena in the manner prescribed for service of a district court subpoena.

(d) If the person to whom a subpoena is directed fails to comply, the board may bring suit in district court to enforce the subpoena. If the court determines that good cause exists for the issuance of the subpoena, the court shall order compliance. The court may modify the requirements of a subpoena that the court determines are unreasonable. Failure to comply with the order of the district court is punishable as contempt.

(e) The board may provide for the compensation of subpoenaed witnesses. The amount of compensation may not exceed the amount paid to a witness subpoenaed by a district court in a civil proceeding.

Sec. 322.022. INTERFERENCE WITH AUDIT OR INVESTIGATION.

(a) An officer or employee of this state or of an entity subject to audit or investigation by the board commits an offense if the officer or employee:

(1) refuses to immediately permit the board to examine or have access to the books, accounts, reports, vouchers, papers, documents, or electronic data to which the board is entitled under Section 322.015(e) or (f) or other law, or access to the cash drawer or cash from the officer's or employee's department;

(2) interferes with an examination by the board; or

(3) refuses to make a report required by this chapter.

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

Sec. 322.023. COORDINATION OF CERTAIN AUDITS. (a) Notwithstanding any other law, a state agency, or a corporation that is dedicated to the benefit of a state agency and that meets the criteria specified by Section B, Article 2.23B, Texas Non-Profit Corporation Act (Article 1396-2.23B, Vernon's Texas Civil Statutes), may employ a private auditor to audit the state agency or corporation only if:

(1) the agency or corporation is authorized to do so by law or through a delegation of authority from the board;

(2) the scope of the proposed audit has been submitted to the board for review and comment; and

(3) the services of the private auditor are procured through a competitive selection process in a manner allowed by law.

(b) At the joint direction of the lieutenant governor and the speaker of the house of representatives, the board shall provide contract management services to the agency or corporation for an audit described by this section.

Sec. 322.024. GIFTS AND GRANTS. (a) The board may accept gifts, grants, and donations from any organization described in Section 501(c)(3), Internal Revenue Code of 1986, for the purpose of funding any activity under this chapter.

(b) All gifts, grants, and donations must be accepted in an open meeting by a majority of the voting members of the board and reported in the public record of the committee with the name of the donor and purpose of the gift, grant, or donation.

Sec. 322.025. COORDINATION OF INVESTIGATIONS. (a) If the administrative head of a department or entity that is subject to audit by the board has reasonable cause to believe that money received from the state by the department or entity or by a client or contractor of the department or entity may have been lost, misappropriated, or misused or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, the administrative head shall report the reason and basis for the belief to the board. The board may investigate the report or may monitor any investigation conducted by the department or entity.

(b) The board, in consultation with state agencies and institutions, shall prescribe the form, content, and timing of a report required by this section.

(c) All records of a communication by or to the board relating to a report to the board under Subsection (a) are audit working papers of the board.

(d) In this section, "audit working papers" means all documentary and other information prepared or maintained in conducting an audit or investigation, including all intra-agency and interagency communications relating to an audit or investigation and all draft reports or portions thereof.

Sec. 322.026. SEAL. The board shall obtain a seal with "Legislative Budget Board, State of Texas" engraved around the margin and a five-pointed star in the center to be used to authenticate official documents issued by the board.

SECTION ____ .05. Chapter 321, Government Code, is repealed.

PART 3. CREATION OF PERFORMANCE REVIEW COMMISSION;
ABOLITION OF SUNSET ADVISORY COMMISSION
AND TRANSFER OF FUNCTIONS TO PERFORMANCE
REVIEW COMMISSION

SECTION ____ .06. Section 325.002, Government Code, is amended to read as follows:

Sec. 325.002. DEFINITIONS. In this chapter:

(1) ["State agency" means an agency expressly made subject to this chapter.]

[~~(2)~~] "Advisory committee" means a committee, council, commission, or other entity created under state law whose primary function is to advise a state agency.

[~~(2)~~] "Commission" means the Performance Review [Sunset Advisory] Commission.

(3) "Department" includes every department, agency, board, bureau, institution, or commission of the state.

(4) "State agency" means an agency expressly made subject to this chapter.

SECTION ____ .07. Section 325.003, Government Code, is amended by amending the section heading and Subsections (a), (d), and (i) to read as follows:

Sec. 325.003. PERFORMANCE REVIEW [SUNSET ADVISORY] COMMISSION.

(a) The Performance Review [~~Sunset Advisory~~] Commission consists of the lieutenant governor and three other [four] members of the senate and one public member appointed by the lieutenant governor and the speaker of the house of representatives and three other [four] members of the house of representatives and one public member appointed by the speaker of the house. [~~Each appointing authority may designate himself as one of the legislative appointees.~~]

(d) Legislative members other than the lieutenant governor and the speaker of the house of representatives serve four-year terms, with terms staggered so that the terms of one-half of the legislative members appointed by the lieutenant governor and the terms of one-half of the legislative members appointed by the speaker expire September 1 of each odd-numbered year. The [~~If the~~] lieutenant governor and [~~or~~] the speaker shall serve [~~serves~~] on the commission[~~, he continues to serve~~] until resignation from the commission or until the lieutenant governor or speaker [~~he~~] ceases to hold the office. Public members serve two-year terms expiring September 1 of each odd-numbered year.

(i) The speaker of the house of representatives is the chairman of the commission [~~shall have a chairman and vice chairman as presiding officers. The chairmanship and vice chairmanship must alternate every two years between the two membership groups appointed by the lieutenant governor and the speaker. The chairman and vice chairman may not be from the same membership group. The lieutenant governor shall designate a presiding officer from his appointed membership group and the speaker shall designate the other presiding officer from his appointed membership group.~~].

SECTION _____.08. Subsection (a), Section 325.008, Government Code, is amended to read as follows:

(a) Before September 1 of the even-numbered year before the year in which a state agency subject to this chapter and its advisory committees are abolished, the commission shall:

(1) review and take action necessary to verify the reports submitted by the agency under Section 325.007;

(2) consult the Legislative Budget Board, the Governor's Budget and Planning Office, [~~the State Auditor,~~] and the comptroller of public accounts, or their successors, on the application to the agency of the criteria provided in Section 325.011;

(3) conduct a performance evaluation of the agency based on the criteria provided in Section 325.011 and prepare a written report; and

(4) review the implementation of commission recommendations contained in the reports presented to the legislature during the preceding legislative session.

SECTION _____.09. Chapter 325, Government Code, is amended by adding Sections 325.0081 through 325.0086 to read as follows:

Sec. 325.0081. OTHER POWERS AND DUTIES. (a) The commission shall conduct performance audits of all departments, including institutions of higher education, as specified in the audit plan developed under Subsection (c).

(b) The commission shall conduct the audits in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, the Governmental Accounting Standards Board, the United States General Accounting Office, or other professionally recognized entities that prescribe auditing standards.

(c) The commission shall develop and approve an audit plan for the state for each fiscal year. In devising the plan, the commission shall consider recommendations concerning coordination of agency functions made jointly by representatives of the commission and the Legislative Budget Board.

(d) At any time during an audit the commission may require the assistance of the administrative head, official, auditor, accountant, or other employees of the entity being audited.

(e) The commission is entitled to access to all of the books, accounts, confidential or unconfidential reports, vouchers, or other records of information in any department or entity subject to audit, including access to all electronic data except as provided by Subsection (f).

(f) The commission has access to information and data the release of which is restricted under federal law only with the approval of the appropriate federal administrative agency. The commission shall have access to copyrighted or restricted information obtained by the comptroller under subscription agreements and used in the preparation of economic estimates only for audit purposes.

(g) The commission may conduct economy and efficiency audits and effectiveness audits as defined by this chapter and specified in the audit plan.

(h) To the extent that the performance of the powers and duties of the commission under law is not impeded, the commission shall make reasonable efforts to coordinate requests for employee assistance under Subsection (d) or requests for access to books, accounts, vouchers, records, or data under Subsection (e) or (f) so as not to hinder the daily operations of the audited entity.

Sec. 325.0082. ECONOMY AND EFFICIENCY AUDIT. An economy and efficiency audit is an audit to determine:

(1) whether the audited entity is managing or utilizing its resources, including personnel, property, equipment, and space, in an economical and efficient manner;

(2) causes of inefficiencies or uneconomical practices, including inadequacies in management information systems, internal and administrative procedures, organizational structure, use of resources, allocation of personnel, purchasing policies, and equipment; and

(3) whether program and statistical reports of the audited entity contain useful data and are fairly presented.

Sec. 325.0083. EFFECTIVENESS AUDIT. An effectiveness audit is an audit to determine, according to established or designated program objectives, responsibilities or duties, statutes and regulations, program performance criteria, or program evaluation standards:

(1) whether the objectives and intended benefits are being achieved efficiently and effectively; and

(2) whether the program duplicates, overlaps, or conflicts with another state program.

Sec. 325.0084. IMPROPER PRACTICES AND ILLEGAL TRANSACTIONS.

(a) If in the course of an audit the commission finds evidence of uneconomical use of resources or ineffective program performance, the commission, after consulting with the head of the department, shall immediately report the evidence to the governor and the administrative head and the chairman of the governing body of the affected department.

(b) If in the course of an audit the commission finds evidence of an illegal transaction, the commission, after consulting with the head of the department, shall immediately report the transaction to the governor and the appropriate legal authority.

(c) The commission shall review a report alleging uneconomical use of resources or ineffective program performance immediately. The commission shall consult with and may hold hearings with the administrative head and the chairman of the governing body of the affected department regarding the report.

(d) If the administrative head or the governing body of the affected department refuses to make the changes recommended by the commission at the hearing or provide any additional information or reports requested, the commission shall report the refusal to the legislature.

Sec. 325.0085. REVIEW OF INTERSCHOLASTIC COMPETITION. The commission may periodically review and analyze the effectiveness and efficiency of the policies, management, fiscal affairs, and operations of an organization that is a component or part of a state agency or institution and that sanctions or conducts interscholastic competition. The commission shall report the findings to the governor, lieutenant governor, and speaker of the house of representatives. The legislature may consider the commission's reports in connection with the legislative appropriations process.

Sec. 325.0086. RECORDS MANAGEMENT REVIEW. (a) The commission may periodically review and analyze the effectiveness and efficiency of the policies and management of a state governmental committee or state agency that is involved in:

(1) analyzing and recommending improvements to the state's system of records management; and

(2) preserving the essential records of this state, including records relating to financial management information.

(b) In this section, "state agency" has the meaning assigned by Section 2056.001.

SECTION _____.10. Sections 403.0205, Government Code, is repealed.

PART 4. POWERS AND FUNCTIONS OF THE
STATE PRESERVATION BOARD

SECTION _____.11. Section 443.007, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The board may adopt any management or oversight method or procedure reasonably necessary to ensure that the requirements under Subsection (a) are met in the most economical and efficient manner.

SECTION ____12. Chapter 443, Government Code, is amended by adding Section 443.0232 to read as follows:

Sec. 443.0232. CONSULTATION WITH THE LEGISLATIVE INFORMATION SERVICES BOARD. (a) The board shall consult with the Legislative Information Services Board regarding the installation of information technology equipment in the Capitol, the General Land Office Building, and their grounds. The interest of preservation must be balanced against the need of the legislative branch of state government for computer hardware and other types of office machinery and communication tools.

(b) The consultation under Subsection (a) shall include an analysis of:

(1) the extent of any permanent changes in the appearance of the buildings or their grounds likely to be caused by the installation of information technology equipment, including wiring and antennas;

(2) methods for minimizing the impact of the installation on the appearance of the buildings or grounds; and

(3) ways to ensure that any necessary alterations in the appearance of the buildings or grounds conform, to the extent reasonably practicable, with the architectural and historical integrity of the buildings or grounds.

PART 5. CONFORMING AMENDMENTS

SECTION ____13. Subsection (a), Section 81.113, Government Code, is amended to read as follows:

(a) Except as provided by Subsection (b), the state bar shall credit an attorney licensed in this state with meeting the minimum continuing legal education requirements of the state bar for a reporting year if during the reporting year the attorney is employed full-time as an attorney by:

- (1) the senate;
- (2) the house of representatives;
- (3) a committee, division, department, or office of the senate or house;
- (4) [the Texas Legislative Council];
- [5] the Legislative Budget Board;
- [6] the Legislative Reference Library;
- [7] the office of the state auditor; or
- [8] the Performance Review [Sunset Advisory] Commission.

SECTION ____14. Subsection (a), Section 301.021, Government Code, is amended to read as follows:

(a) If for any reason it is necessary to obtain assistance in addition to the services provided by the Legislative Budget Board [State Auditor], attorney general, [Texas Legislative Council,] or Department of Public Safety, each general investigating committee may employ and compensate assistants to assist in any investigation, audit, or legal matter.

SECTION ____15. Subsection (a), Section 301.028, Government Code, is amended to read as follows:

(a) Each standing committee, including a general investigating committee, may request necessary assistance from all state agencies, departments, and offices, including:

- (1) the Legislative Budget Board [State Auditor];

- (2) [the Texas Legislative Council;
(3)] the Department of Public Safety; and
(3) [4] the attorney general.

SECTION ____16. Subsections (a) and (d), Section 301.041, Government Code, are amended to read as follows:

(a) A duly appointed senator's or representative's membership on the Legislative Budget Board, Legislative Library Board, [Legislative Audit Committee, Texas] Legislative Information Services Board [Council], or any other interim committee terminates if the member:

- (1) resigns the membership;
- (2) ceases membership in the legislature for any reason; or
- (3) fails to be nominated or elected to the legislature for the next term.

(d) In filling a vacancy created under this section, the lieutenant governor or the speaker may appoint a senator or representative, as appropriate, other than a committee chairman designated by law to serve as a member of the Legislative Budget Board, Legislative Library Board, [Legislative Audit Committee, Texas] Legislative Information Services Board [Council], or any other interim committee. An appointment made under this subsection does not constitute an appointment to any position other than that of a member of a board[~~, council,~~] or committee covered by this section.

SECTION ____17. Section 302.032, Government Code, is amended to read as follows:

Sec. 302.032. LEGISLATIVE BRIBERY: PROMISES OR THREATS. A person commits an offense if, with the intent to influence a member of or candidate for the house of representatives in casting a vote for speaker of the house of representatives, the person:

- (1) promises or agrees to cause:

(A) the appointment of a person to a chairmanship or vice-chairmanship of a house committee or subcommittee;

(B) the appointment of a person to a particular house committee or subcommittee, the Legislative Budget Board, the [Texas] Legislative Information Services Board [Council], the Legislative Library Board, [the Legislative Audit Committee,] or any other position the speaker appoints;

- (C) preferential treatment on any legislation or appropriation;
(D) the employment of a person; or
(E) economic benefit to a person; or

- (2) threatens to cause:

(A) the failure to appoint a person to a chairmanship or vice-chairmanship of a house committee or subcommittee;

(B) the failure to appoint a person to a particular house committee or subcommittee, the Legislative Budget Board, the [Texas] Legislative Information Services Board [Council], the Legislative Library Board, [the Legislative Audit Committee,] or any other position the speaker appoints;

- (C) unfavorable treatment on any legislation or appropriation;
(D) the refusal of or removal from employment of a person; or
(E) the withholding of economic benefit from a person.

SECTION ____18. Section 302.033, Government Code, is amended to read as follows:

Sec. 302.033. LEGISLATIVE BRIBERY: ACCEPTING BENEFITS. A member of or candidate for the house of representatives commits an offense if, on the representation or understanding that the member or candidate will cast a vote for a particular person for speaker of the house of representatives, the member or candidate solicits, accepts, or agrees to accept:

(1) the appointment of or refusal to appoint a person to a chairmanship or vice-chairmanship of a house committee or subcommittee;

(2) the appointment of or refusal to appoint a person to a particular house committee or subcommittee, the Legislative Budget Board, the [Texas] Legislative Information Services Board [Council], the Legislative Library Board, [the Legislative Audit Committee,] or any other position the speaker appoints;

(3) preferential or unfavorable treatment on any legislation or appropriation;

(4) the employment of, refusal of employment of, or removal from employment of a person; or

(5) economic benefit to or withholding of economic benefit from a person.

SECTION ____19. Section 306.007, Government Code, is amended to read as follows:

Sec. 306.007. MINUTES AND REPORTS ELECTRONICALLY AVAILABLE TO LEGISLATURE. A state officer or board, commission, or other agency in the executive branch of state government, and an agency in the judicial branch of state government other than a court, shall make reports required by law and minutes of meetings of the agency's governing body available to members of the legislature and to agencies in the legislative branch of state government in an electronic format determined by the [Texas] Legislative Information Services Board [Council].

SECTION ____20. Section 326.001, Government Code, is amended to read as follows:

Sec. 326.001. DEFINITION. In this chapter, "legislative agency" means:

(1) the senate;

(2) the house of representatives;

(3) a committee, division, department, or office of the senate or house;

(4) the [Texas] Legislative Information Services Board [Council];

(5) the Legislative Budget Board;

(6) the Legislative Reference Library; or

(7) [the office of the State Auditor; or]

[8] any other agency in the legislative branch of state government.

SECTION ____21. Subsections (a) and (b), Section 326.003, Government Code, are amended to read as follows:

(a) The [State Auditor's Office,] Legislative Budget Board[,] and the Performance Review [Sunset Advisory] Commission shall form a committee to make recommendations relating to the coordination of the agencies' functions.

(b) The committee shall meet on a regular basis at least quarterly. The director of the Legislative Budget Board [State Auditor] shall call each meeting.

SECTION ____22. Subsection (b), Section 468.003, Government Code, is amended to read as follows:

(b) The [Texas] Legislative Information Services Board [Council] shall provide office space and other support in Austin necessary for the state demographer to perform the demographer's duties for the legislature.

SECTION ____ .23. Subsection (d), Section 531.203, Government Code, is amended to read as follows:

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

SECTION ____ .24. Subdivision (11), Section 572.002, Government Code, is amended to read as follows:

(11) "State employee" means an individual, other than a state officer, who is employed by:

(A) a state agency;

(B) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of appeals, or the Texas Judicial Council; or

(C) either house of the legislature or a legislative agency, council, or committee, including the Legislative Budget Board, the [Texas] Legislative Information Services Board [Council], [the State Auditor's Office,] and the Legislative Reference Library.

SECTION ____ .25. Subsection (a), Section 660.203, Government Code, is amended to read as follows:

(a) An individual is entitled to reimbursement for the actual expense of meals and lodging incurred while performing the duties of the individual's office or employment if the individual is:

(1) a judicial officer;

(2) a chief administrative officer of a state agency, subject to Subsection (c);

(3) [the executive director of the Texas Legislative Council,]

[4] the secretary of the senate;

(4) [5] a member of the Texas Natural Resource Conservation Commission, the Texas Workforce Commission, the Public Utility Commission of Texas, the Board of Pardons and Paroles, or the Sabine River Compact Administration; or

(5) [6] a full-time member of a board and receives a salary from the state for service on that board.

SECTION ____ .26. Section 660.206, Government Code, is amended to read as follows:

Sec. 660.206. REPRESENTATION OF CERTAIN OFFICERS AND EMPLOYEES. (a) A state employee who is designated by a member of the legislature, a judicial officer, a chief administrator of a state agency, [the executive director of the Texas Legislative Council,] the secretary of the senate, or a board member to represent the designating party at a particular meeting or conference is entitled to reimbursement for the actual expense of meals and lodging on the trip.

(b) A member of the legislature, a judicial officer, a chief administrator of a state agency, [the executive director of the Texas Legislative Council,] the secretary of the senate, and a board member may authorize a state employee traveling with the authorizing party to a particular meeting or conference to receive reimbursement for the actual expense of the employee's meals and lodging on the trip.

SECTION ____ .27. Subsection (a), Section 762.003, Government Code, is amended to read as follows:

(a) The commission is composed of:

(1) nine members appointed by the governor; and

(2) [the executive director of the Texas Legislative Council or a person designated by the executive director; and

[~~(3)~~] in addition to the persons described by Subdivision [Subdivisions] (1) [~~and (2)~~], residents of this state who have long service in the cause of uniformity in state legislation as shown by:

(A) at least 20 years of service representing the state as an associate member of the national conference;

(B) election as a life member of the national conference; or

(C) at least 15 years of service as a member of the commission and at least five years of combined service as a judge or justice of a trial or appellate court of this state.

SECTION ____ .28. Section 762.011, Government Code, is amended to read as follows:

Sec. 762.011. SUPPORT SERVICES. The [Texas] Legislative Information Services Board [Council] shall provide accounting, clerical, and other support services necessary for the commission to carry out its duties.

SECTION ____ .29. Subsection (c), Section 2052.0021, Government Code, is amended to read as follows:

(c) A state agency shall make each report required by law available to members of the legislature in an electronic format determined by the [Texas] Legislative Information Services Board [Council]. The agency shall promptly send a suitable printed copy of the report to a member of the legislature at the request of the member.

SECTION ____ .30. Subsection (d), Section 2056.002, Government Code, is amended to read as follows:

(d) A state agency shall send two copies of each plan to both the Legislative Reference Library and the state publications clearinghouse of the Texas State Library and one copy each to:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives;

(4) the Legislative Budget Board; and

(5) the Performance Review [Sunset Advisory] Commission[;

[~~(6) the state auditor; and~~

[~~(7) the comptroller~~].

SECTION ____ .31. Section 2056.010, Government Code, is amended to read as follows:

Sec. 2056.010. AGENCY CONFORMANCE TO STRATEGIC PLAN. The Performance Review [comptroller, the Sunset Advisory] Commission, the [state auditor, the] Legislative Budget Board, or another agency that conducts performance audits of a state agency shall consider in the evaluation of an agency the extent to which the agency conforms to the agency's strategic plan.

SECTION _____.32. Section 2102.009, Government Code, is amended to read as follows:

Sec. 2102.009. ANNUAL REPORT. The internal auditor shall prepare an annual report and submit the report before November 1 of each year to the governor, the Legislative Budget Board, the Performance Review [Sunset Advisory] Commission, the [state auditor, the] state agency's governing board, and the administrator. The Legislative Budget Board [state auditor] shall prescribe the form and content of the report[, subject to the approval of the legislative audit committee].

SECTION _____.33. Subsections (a) and (c), Section 2102.0091, Government Code, are amended to read as follows:

(a) A state agency shall file with the Performance Review [Sunset Advisory] Commission, the budget division of the governor's office, [the state auditor,] and the Legislative Budget Board a copy of each report submitted to the state agency's governing board or the administrator of the state agency if the state agency does not have a governing board by the agency's internal auditor.

(c) In addition to the requirements of Subsection (a), a state agency shall file with the budget division of the governor's office[, the state auditor,] and the Legislative Budget Board any action plan or other response issued by the state agency's governing board or the administrator of the state agency if the state agency does not have a governing board in response to the report of the state agency's internal auditor.

SECTION _____.34. Section 2155.203, Government Code, is amended to read as follows:

Sec. 2155.203. PURCHASES BY LEGISLATURE AND LEGISLATIVE AGENCIES. A house of the legislature, or an agency, council, or committee of the legislature, including the Legislative Budget Board, the [Texas] Legislative Information Services Board [Council], [the state auditor's office,] and the Legislative Reference Library, may use the commission's purchasing services for purchasing goods and services, including items covered by Section 21, Article XVI, Texas Constitution.

SECTION _____.35. Section 2158.065, Government Code, is amended to read as follows:

Sec. 2158.065. DISTRIBUTION OF PRINTED LAWS. The secretary of state shall distribute the printed laws of each session of the legislature as follows:

- (1) one copy each to:
 - (A) the governor;
 - (B) the lieutenant governor;
 - (C) the speaker of the house of representatives;
 - (D) each court of appeals; and
 - (E) each county law library;
- (2) [10 copies to the Texas Legislative Council;

- [~~(2)~~] 15 copies to the Legislative Reference Library;
(3) [4] 30 copies to the State Law Library; and
(4) [5] 60 copies to the Texas State Library.

SECTION ____ .36. Subsection (c), Section 201.403, Transportation Code, is amended to read as follows:

(c) Not later than February 1 of each year, the director shall report to the commission, each house of the legislature, and the Performance Review [~~Sunset Advisory~~] Commission on the department's progress in the recruitment and hiring of women and minority applicants.

SECTION ____ .37. Subsection (c), Section 41.060, Utilities Code, is amended to read as follows:

(c) The commission shall prepare a report for the Performance Review [~~Sunset Advisory~~] Commission that includes information submitted and responses by electric cooperatives in accordance with the Performance Review [~~Sunset Advisory~~] Commission's schedule for reviewing the commission.

SECTION ____ .38. Subsection (a), Section 12, Chapter 357, Acts of the 64th Legislature, Regular Session, 1975 (Article 4413(32e), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The [~~Texas Legislative Council, the~~] Legislative Budget Board, [~~the Legislative Audit Committee,~~] the Advisory Commission on Intergovernmental Relations, and the Division of Planning Coordination shall, through their respective administrative officers, furnish staff assistance to the committee upon request.

SECTION ____ .39. Subsection (a), Section 11, Chapter 672, Acts of the 65th Legislature, Regular Session, 1977 (Article 4413(42a), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The [~~Texas Legislative Council, the~~] Legislative Budget Board, [~~the Legislative Audit Committee,~~] the Texas Advisory Commission on Intergovernmental Relations, and the Division of Planning Coordination shall, through their respective administrative officers, furnish staff assistance to the committee upon request.

PART 6. TRANSITION

SECTION ____ .40. (a) The Texas Legislative Council is abolished effective September 1, 2003.

(b) On September 1, 2003:

(1) all functions and activities assigned to or performed by the information systems division of the Texas Legislative Council immediately before that date are transferred to the Legislative Information Services Board;

(2) all funds, obligations, contracts, property, and records of the Texas Legislative Council relating to the services performed by the information systems division of the Texas Legislative Council are transferred to the Legislative Information Services Board;

(3) all employees of the information systems division of the Texas Legislative Council become employees of the Legislative Information Services Board;

(4) all of the property and records of the Texas Legislative Council relating to the services performed by the legal and research divisions of the Texas Legislative Council are transferred to either the senate or the house of representatives, as determined by the lieutenant governor and the speaker of the house of representatives;

(5) all employees of the legal and research divisions of the Texas Legislative Council become employees of either the senate or house of representatives, as determined by the lieutenant governor and the speaker of the house of representatives; and

(6) a reference in law to the Texas Legislative Council that relates to the services performed by the information systems division of the Texas Legislative Council means the Legislative Information Services Board.

SECTION ____ .41. (a) The office of state auditor and the legislative audit committee are abolished but continue in effect until December 1, 2003, for the sole purpose of transferring to the Legislative Budget Board all the rights, powers, duties, and functions exercised by the state auditor and the legislative audit committee immediately before the effective date of this Act. The transfer must be completed not later than December 1, 2003.

(b) All the funds, contracts, property, personnel, and records of the office of the state auditor and the legislative audit committee are transferred to the Legislative Budget Board for the purpose of performing the audit functions that the state auditor was authorized or required to perform immediately before the effective date of this Act.

(c) A reference in law or in an administrative rule to the state auditor or the office of the state auditor or the legislative audit committee means the Legislative Budget Board.

(d) A reference in law to a financial or compliance audit under Chapter 321, Government Code, as repealed by this Act, means an audit under Chapter 322, Government Code, as amended by this Act.

(e) A reference in law to an efficiency audit, an economy audit, or a program audit under Chapter 321, Government Code, as repealed by this Act, means an audit under Chapter 325, Government Code (Texas Sunset Act), as amended by this Act.

SECTION ____ .42. (a) The Sunset Advisory Commission is abolished and the offices of the members of the commission serving on the effective date of this Act are abolished.

(b) The validity of an action taken by the Sunset Advisory Commission before it is abolished under Subsection (a) of this section is not affected by the abolishment.

SECTION ____ .43. On September 1, 2003:

(1) a rule, standard, or form adopted by the Sunset Advisory Commission is a rule, standard, or form of the Performance Review Commission and remains in effect until changed by the Performance Review Commission;

(2) a reference in law to the Sunset Advisory Commission means the Performance Review Commission;

(3) all money, contracts, leases, rights, and obligations of the Sunset Advisory Commission are transferred to the Performance Review Commission;

(4) all property, including records, in the custody of the Sunset Advisory Commission becomes the property of the Performance Review Commission; and

(5) all funds appropriated by the legislature to the Sunset Advisory Commission are transferred to the Performance Review Commission.

SECTION ____44. On September 1, 2003, the lieutenant governor shall assume the chairmanship of the Legislative Information Services Board and the speaker of the house of representatives shall assume the vice chairmanship of the board. The initial terms of the lieutenant governor and the speaker of the house of representatives expire February 1, 2005.

The floor amendment was read and was adopted by a viva voce vote.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 65

Amend **CSSB 1952** by adding the following sections, appropriately numbered, and renumbering subsequent sections appropriately:

SECTION _____. Subsection (a), Section 547.302, Transportation Code, is amended to read as follows:

(a) A vehicle shall display each lighted lamp and illuminating device required by this chapter to be on the vehicle:

(1) at nighttime; [~~and~~]

(2) when light is insufficient or atmospheric conditions are unfavorable so that a person or vehicle on the highway is not clearly discernible at a distance of 1,000 feet ahead; or

(3) when, because of moisture, rain, snow, or other obstructions caused by unfavorable atmospheric conditions resulting in substantially reduced visibility, the operator of the vehicle is making use of the vehicle's windshield wipers.

SECTION _____. Section 547.603, Transportation Code, is amended to read as follows:

Sec. 547.603. WINDSHIELD WIPERS REQUIRED. A motor vehicle shall be equipped with a device that is operated or controlled by the operator of the vehicle and that cleans moisture, rain, snow, or other obstructions from the windshield. The device shall be maintained in good working condition.

The floor amendment was read and failed of adoption by a viva voce vote.

On motion of Senator Ellis and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSSB 1952 as amended was passed to engrossment by a viva voce vote.

COMMITTEE SUBSTITUTE
SENATE BILL 1952 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 **CSSB 1952** 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 Staples, joined by Senator Ratliff, was recognized and introduced to the Senate students from the political science class at Panola College in Carthage.

The Senate welcomed its guests.

**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 today:

SB 1956, HB 2029, HB 3578, HB 3591.

**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 today: **HB 649, HB 2323, HB 2496, HCR 199, HB 408.**

**SENATE RULES SUSPENDED
(Posting Rules)**

On motion of Senator Wentworth and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Infrastructure Development and Security might meet and consider **HB 3588** today.

**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 the following bills tomorrow:

HB 1314, HB 2117, HB 3257.

**SENATE RULES SUSPENDED
(Posting Rules)**

On motion of Senator Whitmire and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Criminal Justice might meet and consider the following bills tomorrow:

HB 325, HB 406, HB 1629, HB 565, HB 1661.

**SENATE RULE 11.18(a) SUSPENDED
(Public Hearings)**

On motion of Senator Armbrister and by unanimous consent, Senate Rule 11.18(a) was suspended in order that the Committee on Natural Resources might consider the following bills today:

HB 3567, HB 2554, SCR 56, HB 2888, SB 780, HB 3157, HB 3035, HB 298.

**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 **HB 1090** 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 today:

HB 3034, HB 470, HB 2593, HJR 85, HB 1131, HB 1998, HB 3534.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 521**

Senator Staples submitted the following Conference Committee Report:

Austin, Texas
May 22, 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 **SB 521** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

STAPLES
ARMBRISTER
LUCIO
ESTES
BRIMER

On the part of the Senate

HARDCASTLE
HAGGERTY
FLORES
GRUSENDORF
MARCHANT

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the acquisition and regulation of manufactured homes; providing penalties.

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

SECTION 1. Section 1201.003, Occupations Code, is amended by adding Subdivisions (2-a) and (23-a) to read as follows:

(2-a) "Attached" in reference to a manufactured home means that the home has been:

(A) installed in compliance with the rules of the department; and
(B) connected to a utility, including a utility providing water, electric,
natural gas, propane or butane gas, or wastewater service.

(23-a) "Statement of ownership and location" means a statement issued by the department and setting forth:

(A) the ownership and location of a manufactured home that has been sold at a retail sale or installed in this state as provided by Section 1201.205; and

(B) other information required by this chapter.

SECTION 2. Subsection (a), Section 1201.055, Occupations Code, is amended to read as follows:

(a) With guidance from the federal Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.) and from the rules and regulations adopted under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.), the board shall establish fees as follows:

(1) if the department acts as a design approval primary inspection agency, a schedule of fees for the review of HUD-code manufactured home blueprints and supporting information, to be paid by the manufacturer seeking approval of the blueprints and supporting information;

(2) except as provided by Subsection (e), a fee for the inspection of each HUD-code manufactured home manufactured or assembled in this state, to be paid by the manufacturer of the home;

(3) a fee for the inspection of an alteration made to the structure or plumbing, heating, or electrical system of a HUD-code manufactured home, to be charged on an hourly basis and to be paid by the person making the alteration;

(4) a fee for the inspection of the rebuilding of a salvaged manufactured home, to be paid by the rebuilder;

(5) a fee for the inspection of a used manufactured home [for which the title has been canceled] to determine whether the home is habitable for the issuance of a new statement of ownership and location [title]; and

(6) a fee for the issuance of a seal for a used mobile or HUD-code manufactured home.

SECTION 3. Section 1201.059, Occupations Code, is amended to read as follows:

Sec. 1201.059. [TITLE] FEES FOR STATEMENTS OF OWNERSHIP AND LOCATION. (a) The board shall set fees for issuing statements of ownership and location [and canceling titles to manufactured housing].

(b) Ten dollars of the fee for each purchase, exchange, or lease-purchase of a manufactured home [title transaction] shall be deposited to the credit of the trust fund and used for the protection programs described by Subchapter I.

SECTION 4. Subsection (g), Section 1201.101, Occupations Code, is amended to read as follows:

(g) A person may not make an announcement concerning the sale, exchange, or lease-purchase of, or offer to sell, exchange, or lease-purchase, a manufactured home to a consumer in this state through an advertisement unless the person holds a manufacturer's, retailer's, or broker's license. This subsection does not apply to:

(1) a person to whom a statement of ownership and location [certificate or other document of title] has been issued showing the person to be the owner of the home if the person does not offer to sell, exchange, or lease-purchase two or more manufactured homes in a 12-month period; or

(2) an advertisement concerning real property to which a manufactured home has been permanently attached.

SECTION 5. Section 1201.113, Occupations Code, is amended to read as follows:

Sec. 1201.113. CERTIFICATION AND CONTINUING EDUCATION PROGRAMS. (a) The board shall [~~department may~~] recognize, prepare, or administer [~~a~~] certification and continuing education programs [~~program~~] for persons regulated under this chapter. [Participation in a certification program is voluntary.]

(b) [~~The board shall recognize, prepare, or administer a continuing education program for its license holders.~~] A license holder must participate in certification and [~~a~~] continuing education programs as provided by Subsection (e) [~~program to the extent required by the board to retain the person's license~~].

(c) To prepare or administer a certification or continuing education program under this section, the board may contract with:

(1) a private, nonprofit organization that qualifies for an exemption from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code; or

(2) an educational institution.

(d) To be considered for a contract under Subsection (c), an organization or institution must submit an application. The board may charge an application fee to be set by the board in an amount necessary to pay the costs of processing the application.

(e) Persons regulated under this chapter and directly involved in the sale of manufactured housing must complete eight hours of certification and continuing education programs each year. The programs must address state and federal law applicable to all manufactured housing retailer practices and relevant consumer protection regulations and ethical standards.

(f) The department shall issue an appropriate certificate to a person who completes a certification program and [or] participates in a continuing education program under this section.

(g) The board shall suspend the license of a person regulated under this chapter who does not complete the programs as required by this section. The board shall reinstate the license on the person's completion of the programs.

SECTION 6. Subsection (a), Section 1201.153, Occupations Code, is amended to read as follows:

(a) A retailer or manufacturer may not transfer ownership of [~~title to~~] a HUD-code manufactured home or otherwise sell, assign, or convey a HUD-code manufactured home to a consumer unless the retailer or manufacturer delivers to the consumer a formaldehyde health notice, subject to the director's rules concerning the notice.

SECTION 7. Section 1201.159, Occupations Code, is amended to read as follows:

Sec. 1201.159. BROKER. (a) A broker may but is not required to be the agent of a party involved in the sale, exchange, or lease-purchase of a manufactured home for which a statement of ownership and location [~~certificate or other document of title~~] has been issued and is outstanding.

(b) A person is not required to be a broker licensed under this chapter but may be required to be a real estate broker or salesperson licensed under Chapter 1101 if:

- (1) the manufactured home is attached [to a permanent foundation]; and
- (2) [the manufacturer's certificate or the document of title is canceled; and]
- [③] the home is offered as real property.

SECTION 8. If the Act of the 78th Legislature, Regular Session, 2003, relating to nonsubstantive additions to and corrections in enacted codes takes effect, Subsection (a), Section 1201.162, Occupations Code, is amended to read as follows:

(a) Before the completion of a credit application, the retailer or agent must provide to the consumer the following statement that is printed in at least 12-point [~~10 point~~] type and not attached to or combined with any other written material:

"When buying a manufactured home, there are a number of important considerations, including price, quality of construction, features, floor plan, and financing alternatives.

"The United States Department of Housing and Urban Development (HUD) helps protect consumers through regulation and enforcement of HUD design and construction standards for manufactured homes. Manufactured homes that meet HUD standards are known as 'HUD-code manufactured homes.' The Texas Department of Housing and Community Affairs regulates Texas manufacturers, retailers, brokers, salespersons, installers, and rebuilders of manufactured homes.

"If you plan to place a manufactured home on land that you own or will buy, you should consider items such as:

"**ZONING AND RESTRICTIVE COVENANTS.** Municipalities [~~Some municipalities~~] or subdivisions may restrict placement of manufactured homes on certain lots, may prohibit the placement of homes within a certain distance from property lines, may require that homes be a certain size, and may impose certain construction requirements. You may need to obtain building permits and homeowner association approval before you place a manufactured home on a certain lot. Contact the local municipality, county, and subdivision manager to find out if you can place the manufactured home of your choice on a certain lot.

"**WATER.** [Not all lots have immediate access to water lines. You may have to drill a well.] Be sure that your lot has access to water. If you must drill a well, contact several drillers for bids. If water is available through [~~provided by~~] a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay and the costs necessary to join the water system.

"**SEWER.** If your lot is not serviced by a municipal sewer system or utility district, you will [~~may~~] have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support an on-site sewer facility. Check with the local county or a licensed private installer to determine the requirements that apply to your lot and the cost to install such a system.

"**HOMEOWNER ASSOCIATION FEES.** Many subdivisions have mandatory assessments and fees that lot owners must pay. Check with the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.

"TAXES. Your home will be appraised and subject to ad valorem taxes as are other single-family residential structures. These taxes must be escrowed with your monthly payment, except that your lender is not obligated to impose an escrow requirement in a real property transaction involving a manufactured home if the lender is a federally insured financial institution and does not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property. On closing, you will be notified of all provisions pertaining to federal truth in lending disclosures.

"INSURANCE. Your lender may require you to obtain insurance that meets lender requirements and protects your investment. You should request quotes from the agent of your choice to obtain the insurance.

"TYPES OF MORTGAGES AVAILABLE. The acquisition of a manufactured home may be financed by a real estate mortgage or a chattel mortgage. A real estate mortgage may have a lower interest rate than a chattel mortgage.

"RIGHT OF RESCISSION. If you acquire a manufactured home, by purchase, exchange, or lease-purchase, you may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge." [In Texas, real property is taxed annually based on its market value. Attaching a manufactured home to a lot improves the lot's value and will increase the taxes assessed on the lot. You are liable for the payment of all ad valorem taxes assessed against your home by the municipality, county, school district, and other tax authorities (utility district, community college, etc.). As with other residential structures, the applicable tax rate will apply to the market value of the home. You should contact the local chief appraiser or the county tax assessor collector for specific tax information. They will need to know the price you paid for, and the specific location of, the home. If the manufactured home is your principal place of residence, you should be able to claim a HOMESTEAD EXEMPTION. You should also make certain that the lot or land you are purchasing is not subject to any rollback tax liability because of the change in use of the property.]

SECTION 9. If the Act of the 78th Legislature, Regular Session, 2003, relating to nonsubstantive additions to and corrections in enacted codes does not take effect, Subsection (a), Section 21, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Prior to the completion of a credit application, the retailer or agent must provide to the consumer the following statement that is printed in at least 12-point [~~10 point~~] type and not attached to or combined with any other written material:

"When buying a manufactured home, there are a number of important considerations, including price, quality of construction, features, floor plan, and financing alternatives.

"The United States Department of Housing and Urban Development (HUD) helps protect consumers through regulation and enforcement of HUD design and construction standards for manufactured homes. Manufactured homes that meet HUD standards are known as 'HUD-code manufactured homes.' The Texas Department of Housing and Community Affairs regulates Texas manufacturers, retailers, brokers, salespersons, installers, and rebuilders of manufactured homes.

"If you plan to place a manufactured home on land that you own or will buy, you should consider items such as:

"**ZONING AND RESTRICTIVE COVENANTS.** Municipalities [~~Some municipalities~~] or subdivisions may restrict placement of manufactured homes on certain lots, may prohibit the placement of homes within a certain distance from property lines, may require that homes be a certain size, and may impose certain construction requirements. You may need to obtain building permits and homeowner association approval before you place a manufactured home on a certain lot. Contact the local municipality, county, and subdivision manager to find out if you can place the manufactured home of your choice on a certain lot.

"**WATER.** [~~Not all lots have immediate access to water lines. You may have to drill a well.~~] Be sure that your lot has access to water. If you must drill a well, contact several drillers for bids. If water is available through [~~provided by~~] a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay and the costs necessary to join the water system.

"**SEWER.** If your lot is not serviced by a municipal sewer system or utility district, you will [~~may~~] have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support an on-site sewer facility. Check with the local county or a licensed private installer to determine the requirements that apply to your lot and the cost to install such a system.

"**HOMEOWNER ASSOCIATION FEES.** Many subdivisions have mandatory assessments and fees that lot owners must pay. Check with the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.

"**TAXES.** Your home will be appraised and subject to ad valorem taxes as are other single-family residential structures. These taxes must be escrowed with your monthly payment, except that your lender is not obligated to impose an escrow requirement in a real property transaction involving a manufactured home if the lender is a federally insured financial institution and does not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property. On closing, you will be notified of all provisions pertaining to federal truth in lending disclosures.

"**INSURANCE.** Your lender may require you to obtain insurance that meets lender requirements and protects your investment. You should request quotes from the agent of your choice to obtain the insurance.

"**TYPES OF MORTGAGES AVAILABLE.** The acquisition of a manufactured home may be financed by a real estate mortgage or a chattel mortgage. A real estate mortgage may have a lower interest rate than a chattel mortgage.

"**RIGHT OF RESCISSION.** If you acquire a manufactured home, by purchase, exchange, or lease-purchase, you may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge." [In Texas, real property is taxed annually based on its market value. Attaching a manufactured home to a lot improves the lot's value and will increase the taxes assessed on the lot. You are liable for the payment of all ad valorem taxes assessed against your home by the municipality, county, school district, and other tax authorities (utility district, community college, etc.). As with other residential

~~structures, the applicable tax rate will apply to the market value of the home. You should contact the local chief appraiser or the county tax assessor collector for specific tax information. They will need to know the price you paid for, and the specific location of, the home. If the manufactured home is your principal place of residence, you should be able to claim a HOMESTEAD EXEMPTION. You should also make certain that the lot or land you are purchasing is not subject to any rollback tax liability because of the change in use of the property.]~~

SECTION 10. Subchapter D, Chapter 1201, Occupations Code, is amended by adding Sections 1201.1505, 1201.1521, 1201.163, 1201.164, and 1201.165 to read as follows:

Sec. 1201.1505. DEPOSIT ON SPECIALLY ORDERED MANUFACTURED HOMES. A retailer may require an earnest money deposit on a specially ordered manufactured home only if:

- (1) an earnest money contract has been signed by all parties;
- (2) if applicable, the original binding loan commitment letter issued by the lender is delivered to the consumer; and
- (3) the consumer has not rescinded the contract under Section 1201.1521.

Sec. 1201.1521. RESCISSION OF CONTRACT FOR SALE, EXCHANGE, OR LEASE-PURCHASE OF HOME. A person who acquires a manufactured home by purchase, exchange, or lease-purchase may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge.

Sec. 1201.163. CHATTEL MORTGAGE TRANSACTION: CONSUMER PROTECTION DISCLOSURES. (a) In addition to the disclosure statement required by Section 1201.162, the department shall adopt rules addressing consumer protection disclosures required in chattel mortgage transactions and prescribe the form for the disclosure statement. A consumer protection disclosure statement under this subsection must include the following:

(1) a statement of the significant differences between chattel mortgages and real estate mortgages;

(2) an itemization of estimated closing costs, if any;

(3) an estimate of the total amount of monthly payments, including:

(A) principal and interest payments;

(B) costs of any required insurance; and

(C) costs for payment of ad valorem taxes, based on the current tax rate of each taxing unit in which the manufactured home will be located as applied to the sales price of the manufactured home;

(4) a statement of the roles of the retailer and any affiliated parties in the financing of the first retail sale, as defined by Section 1201.201, and the estimated compensation that they will receive for providing or arranging the financing; and

(5) any other disclosures required by state or federal law, including the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. Section 2601 et seq.) and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.).

(b) A retailer shall provide the consumer protection disclosure statement to the consumer at least 24 hours before the installment contract is fully executed, as provided by Section 1201.164.

(c) On receipt of the consumer protection disclosure statement, the consumer shall execute a written acknowledgment that the consumer has received the statement.

(d) In addition to other rights of rescission provided by this chapter, the installment contract is subject to rescission by the consumer until the earlier of:

(1) the expiration of the two-year period following the date the contract was fully executed; or

(2) the consumer's execution of a written acknowledgment that the consumer has received the consumer protection disclosure statement required by this section.

(e) If the payment was made under the contract, a consumer who rescinds an installment contract as provided by this section is entitled to receive a refund of all money paid to any person by the consumer, except money paid to obtain a credit report.

(f) This section does not apply to a real estate transaction.

Sec. 1201.164. ADVANCE COPY OF INSTALLMENT CONTRACT AND DISCLOSURE STATEMENTS; OFFER BY RETAILER. (a) In a chattel mortgage transaction involving an installment contract, a retailer shall deliver to a consumer at least 24 hours before the contract is fully executed the disclosure statements required by this subchapter and the contract, with all required information included, signed by the retailer. The delivery of the disclosure statements and installment contract, with all required information included, signed by the retailer constitutes a firm offer by the retailer. The consumer may accept the offer not earlier than 24 hours after the delivery of the documents.

(b) A consumer may not waive the right to receive the disclosure statements under this section.

Sec. 1201.165. NONBINDING ESTIMATE. In a chattel mortgage transaction, if a retailer provides a nonbinding estimate regarding the contract price of a manufactured home or the monthly payments or interest rate applicable to a loan issued in connection with the home, the estimate must be made in writing and in good faith.

SECTION 11. The heading to Subchapter E, Chapter 1201, Occupations Code, is amended to read as follows:

SUBCHAPTER E. MANUFACTURED HOME STATEMENTS OF OWNERSHIP AND LOCATION [TITLES]

SECTION 12. Subdivisions (2), (3), and (11), Section 1201.201, Occupations Code, are amended to read as follows:

(2) "Document of title" means a written instrument issued solely by and under the authority of the director before September 1, 2003, that provides the information required by Section 1201.205, as that section existed before that date. Beginning September 1, 2003, a document of title is considered to be a statement of ownership and location and may be exchanged for a statement of ownership and location as provided by Section 1201.214.

(3) "First retail sale" means a consumer's initial acquisition of a new manufactured home from a retailer by purchase, exchange, or lease-purchase. The term includes a bargain, sale, transfer, or delivery of a manufactured home for which the director has not previously issued a statement of ownership and location [document of title], with intent to pass an interest in the home, other than a lien.

(11) "Subsequent sale" means a bargain, sale, transfer, or delivery of a manufactured home, with intent to pass an interest in the home, other than a lien, from one person to another after the first retail sale and initial issuance of a statement of ownership and location [document of title].

SECTION 13. Sections 1201.203, 1201.204, and 1201.205, Occupations Code, are amended to read as follows:

Sec. 1201.203. FORMS; RULES. (a) The director shall prescribe forms and adopt rules relating to:

(1) the manufacturer's certificate;

(2) the statement of ownership and location;

(3) the application for a statement of ownership and location [document of title]; and

(4) [3] the issuance of a statement of ownership and location [document of title] at the first retail sale and for a subsequent sale or transfer of a manufactured home.

(b) The director shall adopt rules for the documenting of the ownership and location [titling] of a manufactured home that has been previously owned [registered or titled] in this state or another state. The rules must protect a lienholder recorded on a statement of ownership and location, a certificate, or other document of title.

Sec. 1201.204. MANUFACTURER'S CERTIFICATE. (a) A manufacturer's certificate must show:

(1) on a form prescribed by the director or on another document, the original transfer of a manufactured home from the manufacturer to the retailer; and

(2) on a form prescribed by the director, each subsequent transfer of a manufactured home between retailers and from retailer to owner, if the transfer from retailer to owner involves a completed [presented with an] application for the issuance of a statement of ownership and location [document of title].

(b) At the first retail sale of a manufactured home, a manufacturer's certificate automatically converts to a document that does not evidence any ownership interest in the manufactured home described in the document. A security interest in inventory evidenced by the manufacturer's certificate automatically converts to a security interest in proceeds and cash proceeds.

(c) After the first retail sale of a manufactured home, the retailer may submit the manufacturer's certificate for that home to the department.

Sec. 1201.205. STATEMENT OF OWNERSHIP AND LOCATION [DOCUMENT OF TITLE CONTENTS]. A statement of ownership and location [document of title] must provide:

(1) the names and addresses of:

[A] the purchaser and seller [at the first retail sale, or

[B] the transferee and transferor at any subsequent sale or transfer];

(2) the manufacturer's name and address and any model designation;

(3) in accordance with the director's rules:

(A) the outside dimensions of the manufactured home when installed for occupancy, as measured to the nearest one-half foot at the base of the home, exclusive of the tongue or other towing device; and

(B) the approximate square footage of the home when installed for occupancy;

(4) the identification number for each section or module of the home;

(5) the county of this state in which the home is installed for occupancy;

(6) in chronological order of recordation, the date of each lien on the home and the name and address of each lienholder, or, if a lien is not recorded, a statement of that fact;

(7) the signature of the owner in ink, given on receipt of the document;

(8) a statement that if two or more eligible persons, as determined by Section 1201.213, file with the application for the issuance of a statement of ownership and location [document of title] an agreement signed by all the persons providing that the home is to be held jointly with a right of survivorship, the director shall issue the statement of ownership and location [document of title] in all the names; [and]

(9) the location of the home;

(10) a statement of whether the owner has elected to treat the home as real property or personal property;

(11) statements of whether the home is a salvaged manufactured home and whether the home is reserved for business use only; and

(12) any other information the director requires.

SECTION 14. Subchapter E, Chapter 1201, Occupations Code, is amended by adding Section 1201.2055 to read as follows:

Sec. 1201.2055. ELECTION BY OWNER. (a) In completing an application for the issuance of a statement of ownership and location, an owner of a manufactured home shall indicate whether the owner elects to treat the home as personal property or real property. An owner may elect to treat a manufactured home as real property only if the home is attached to:

(1) real property that is owned by the owner of the home; or

(2) land leased to the owner of the home under a long-term lease, as defined by department rule.

(b) A statement of election under Subsection (a) must be made by affidavit.

(c) If the department issues a statement of ownership and location to an owner who has elected to treat a manufactured home as personal property, the statement of ownership and location on file with the department is evidence of ownership of the home. A lien, charge, or other encumbrance on a home treated as personal property may be made only by filing the appropriate document with the department.

(d) If the department issues a statement of ownership and location to an owner who has elected to treat a manufactured home as real property, the manufactured home is not considered to be real property until a certified copy of the statement of ownership and location has been filed in the real property records of the county in which the home is located. After the certified copy has been filed in the real property records of the county, the home is considered to be real property in the form of an

improvement to the underlying real property on which the home is located. If a real property election has been made but a certified copy of the statement of ownership and location has not been filed as required by this subsection, the home continues to be treated as personal property until the certified copy is filed.

SECTION 15. Sections 1201.206 and 1201.207, Occupations Code, are amended to read as follows:

Sec. 1201.206. APPLICATION FOR ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION [TITLE]. (a) Before the first retail sale of a manufactured home, the retailer shall timely provide to the consumer an application for the issuance of a statement of ownership and location and any information necessary to complete the application.

(b) At the first retail sale of a manufactured home, the retailer shall provide for the installation of the home and ensure that the application for the issuance of a statement of ownership and location is properly completed. The consumer shall return the completed application to the retailer.

(c) Not later than the 30th day after the date of the retail sale, the retailer shall provide to the department the completed application for the issuance of a statement of ownership and location [and purchaser shall apply for the issuance of a document of title. As part of the application, the retailer must surrender the original manufacturer's certificate].

(d) [b] At a subsequent sale or transfer of the home, the [seller and] purchaser or [the transferor and] transferee[, as applicable,] shall apply for the issuance of a new statement of ownership and location [document of title. As part of the application, the seller or transferor must surrender the original document of title].

(e) Ownership of a manufactured home does not pass or vest at a sale or transfer of the home until a completed application for the issuance of a statement of ownership and location is filed with the department.

(f) If the owner of a manufactured home relocates the home, the owner shall apply for the issuance of a new statement of ownership and location not later than the 30th day after the date the home is relocated. The department shall require that the owner submit evidence that the home was relocated in accordance with the requirements of the Texas Department of Transportation.

Sec. 1201.207. ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION [TITLE]. (a) The department shall process any completed application for the issuance of a statement of ownership and location not later than the 10th working day after the date the application is received by the department. If the department rejects an application, the department shall provide a clear and complete explanation of the reason for the rejection and instructions on how to cure any defects, if possible.

(b) If the department issues a statement of ownership and location for a manufactured home, the department shall place in its files the original statement of ownership and location and shall mail a certified copy to the owner of the home and to any lienholder.

(c) Except with respect to any change in use, but subject to Section 1201.2075, if the department has issued a statement of ownership and location for a manufactured home, the department may issue a subsequent statement of ownership and location for the home only if all parties reflected in the department's records as having an interest

in the manufactured home give their written consent or release their interest, either in writing or by operation of law [Except as otherwise provided by this subchapter, if a lien is not recorded, the department shall:

[1] issue a document of title marked "ORIGINAL" on the face of the document of title; and

[2] send the original by first class mail to the purchaser or transferee at the address on the application.

[3] Except as otherwise provided by this subchapter, if a lien is shown in the application or recorded with the department, the department shall:

[1] issue a document of title marked "ORIGINAL" on the face of the document of title and send the original by first class mail to the first lienholder; and

[2] send a copy of the document of title conspicuously marked "NONTRANSFERABLE COPY" on the face of the document of title by first class mail to the purchaser or transferee and any other lienholder at the address on the application].

SECTION 16. Subchapter E, Chapter 1201, Occupations Code, is amended by adding Section 1201.2075 to read as follows:

Sec. 1201.2075. CONVERSION FROM PERSONAL PROPERTY TO REAL PROPERTY. (a) Except as provided by Subsection (b), the department may not issue a statement of ownership and location for a manufactured home that is being converted from personal property to real property until:

(1) each lien on the home is released by the lienholder; or

(2) each lienholder gives written consent, to be placed on file with the department.

(b) The department may issue a statement of ownership and location before the release of any liens or the consent of any lienholders as required by this section only if the department releases a certified copy of the statement to:

(1) a licensed title insurance company that has issued a title insurance policy covering all prior liens on the home; or

(2) a federally insured financial institution or licensed attorney who has obtained from a licensed title insurance company a title insurance policy covering all prior liens on the home.

SECTION 17. The heading to Section 1201.208, Occupations Code, is amended to read as follows:

Sec. 1201.208. PAYMENT OF TAXES REQUIRED FOR ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION [TITLE].

SECTION 18. Subsection (a), Section 1201.208, Occupations Code, is amended to read as follows:

(a) The department may not issue a statement of ownership and location [document of title] for a new manufactured home installed for occupancy in this state unless the state sales and use tax has been paid.

SECTION 19. Section 1201.209, Occupations Code, is amended to read as follows:

Sec. 1201.209. GROUNDS FOR REFUSAL TO ISSUE OR FOR SUSPENSION OR REVOCATION OF STATEMENT OF OWNERSHIP AND LOCATION [TITLE]. The department may not refuse to issue a statement of ownership and location [document of title] and may not suspend or revoke a statement of ownership and location [document of title] unless:

(1) the application for issuance of the statement of ownership and location [document of title] contains a false or fraudulent statement, the applicant failed to provide information required by the director, or the applicant is not entitled to issuance of the statement of ownership and location [document of title];

(2) the director has reason to believe that the manufactured home is stolen or unlawfully converted, or the issuance of a statement of ownership and location [document of title] would defraud the owner or a lienholder of the manufactured home;

(3) the director has reason to believe that the manufactured home is salvaged, and an application for the issuance of a new statement of ownership and location that indicates that the home is salvaged [salvage title] has not been filed;

(4) the required fee has not been paid;

(5) the state sales and use tax has not been paid in accordance with Chapter 158, Tax Code, and Section 1201.208; or

(6) a local tax lien was filed before September 1, 2001, and recorded under Section 32.015, Tax Code, as that section existed on the date the lien was filed, and the lien has not been extinguished.

SECTION 20. The heading to Section 1201.210, Occupations Code, is amended to read as follows:

Sec. 1201.210. PROCEDURE FOR REFUSAL TO ISSUE OR SUSPENSION OR REVOCATION OF STATEMENT OF OWNERSHIP AND LOCATION [TITLE].

SECTION 21. Subsection (a), Section 1201.210, Occupations Code, is amended to read as follows:

(a) If the director refuses to issue or suspends or revokes a statement of ownership and location [document of title], the director shall give, by certified mail, written notice of that action to:

(1) the seller and purchaser or transferor and transferee, as applicable; and

(2) the holder of a lien or security interest of record.

SECTION 22. Section 1201.212, Occupations Code, is amended to read as follows:

Sec. 1201.212. TRANSFER OF OWNERSHIP [TITLE] BY OPERATION OF LAW. (a) If the ownership of a manufactured home in this state is transferred by inheritance, devise, or bequest, by bankruptcy, receivership, judicial sale, or other involuntary divestiture of ownership, or by any other operation of law, the department shall issue a new statement of ownership and location [document of title] after receiving a certified copy of:

(1) the order or bill of sale from an officer making a judicial sale;

(2) the order appointing a temporary administrator;

(3) the probate proceedings;

(4) the letters testamentary or the letters of administration; or

(5) if administration of an estate is not necessary, an affidavit by all of the heirs at law showing:

(A) that administration is not necessary; and

(B) the name in which the statement of ownership and location certificate should be issued.

(b) The department may issue a new statement of ownership and location document of title in the name of the purchaser at a foreclosure sale:

(1) for a lien or security interest foreclosed according to law by nonjudicial means, if the lienholder or secured party files an affidavit showing the nonjudicial foreclosure according to law; or

(2) for a foreclosed constitutional or statutory lien, if the person entitled to the lien files an affidavit showing the creation of the lien and the resulting divestiture of title according to law.

(c) The department shall issue a new statement of ownership and location document of title to a survivor if:

(1) an agreement providing for a right of survivorship is signed by two or more eligible persons, as determined under Section 1201.213; and

(2) on the death of one of the persons, the department is provided with a copy of the death certificate of that person.

SECTION 23. Subsection (b), Section 1201.213, Occupations Code, is amended to read as follows:

(b) If the statement of ownership and location title is being issued in connection with the sale of the home, the seller is not eligible to sign a right of survivorship agreement under this subchapter unless the seller is the child, grandchild, parent, grandparent, or sibling of each other person signing the agreement. A family relationship required by this subsection may be a relationship established by adoption.

SECTION 24. Sections 1201.214, 1201.215, and 1201.216, Occupations Code, are amended to read as follows:

Sec. 1201.214. [LOST OR DESTROYED] DOCUMENT OF TITLE. (a) Effective September 1, 2003, all outstanding documents of title are considered to be statements of ownership and location.

(b) An owner or lienholder may provide to the department the document of title and any additional information required by the department and request that the department issue a statement of ownership and location to replace the document of title. The department shall mail to the owner or lienholder a certified copy of the statement of ownership and location issued under this subsection.

(c) An owner or lienholder who applies for the issuance of a statement of ownership and location to replace a [~~If an original document of title is~~] lost or destroyed document of title must execute[~~, the owner or lienholder may obtain a certified copy of the original from the department by making~~] an affidavit on a form prescribed by the director. [~~The department may issue the certified copy only to the first lienholder if a lien is disclosed on the original. The certified copy must be conspicuously marked "CERTIFIED COPY OF ORIGINAL" on the face of the copy.~~]

(d) [~~(e)~~] If the original document of title is recovered, the owner or lienholder shall immediately surrender the original to the department [~~with the certified copy of the original, and the department shall issue a new original document of title~~].

Sec. 1201.215. PREVIOUS OWNER OR LIENHOLDER UNAVAILABLE. If information establishing ownership [~~an original document of title~~] is unavailable because a previous owner or lienholder cannot be located or because a manufactured home has been abandoned, a person may apply to the department for the issuance of a statement of ownership and location and may receive a certified copy of that statement only [replacement title] by presenting:

(1) evidence satisfactory to the department that the effort to locate the previous owner or lienholder has been unsuccessful; and

(2) an affidavit stating that to the best of the applicant's knowledge, the applicant is entitled to a good and marketable title to the manufactured home.

Sec. 1201.216. CHANGE IN USE. (a) The department shall indicate on the statement of ownership and location for [~~cancel a title to~~] a manufactured home whether the home [~~that~~] has been sold, exchanged, or lease-purchased to a purchaser for the purchaser's business use. For a home sold, exchanged, or lease-purchased as described by this subsection, the department shall issue a new statement of ownership and location that indicates that the home is reserved for business use.

(b) On application, the department may issue a new statement of ownership and location for [~~title to~~] the home after an inspection and determination that the home is habitable. The statement must indicate that the home is no longer reserved for business use.

(c) The department shall issue a statement of ownership and location that indicates that a home is salvaged [~~salvage title~~] for a salvaged manufactured home.

(d) For a salvaged manufactured home that is rebuilt according to the director's rules, the department shall [~~and may~~] issue a new statement of ownership and location, which must indicate that the home is no longer salvaged [~~title for a new home rebuilt according to the director's rules~~].

SECTION 25. Subsection (d), Section 1201.219, Occupations Code, is amended to read as follows:

(d) The department shall print on each statement of ownership and location [~~document of title~~] issued under this subchapter a notice that:

(1) the statement of ownership and location [~~document of title~~] may not reflect the existence of a tax lien notice filed for the manufactured home after the date the statement of ownership and location [~~document of title~~] was issued; and

(2) information about a tax lien for which notice has been filed may be obtained from the department on written request.

SECTION 26. Subsection (a), Section 1201.220, Occupations Code, is amended to read as follows:

(a) The department shall provide to each county tax assessor-collector in this state a monthly report that, for each manufactured home installed in the county during the preceding month and for each manufactured home previously installed in the county for which a transfer of ownership was recorded by the issuance of a statement of ownership and location [~~document of title~~] during the preceding month, lists:

- (1) the name of the owner of the home;
- (2) the name of the manufacturer of the home;
- (3) the model designation of the home;
- (4) the identification number of each section or module of the home;

- (5) the address or location where the home is installed; and
- (6) the date of the installation of the home.

SECTION 27. Subsection (b), Section 1201.221, Occupations Code, is amended to read as follows:

- (b) A request under Subsection (a) must contain:

(1) the name of the owner of the home as reflected on the statement of ownership and location [who has a document of title]; or

- (2) the identification number of the home.

SECTION 28. If the Act of the 78th Legislature, Regular Session, 2003, relating to nonsubstantive additions to and corrections in enacted codes takes effect, Subsections (a), (b), and (c), Section 1201.222, Occupations Code, are amended to read as follows:

(a) A manufactured home [that] is treated [permanently attached to real property is classified and taxed] as real property only if:

(1) the owner of the home has elected to treat the home as real property as provided by Section 1201.2055; and

(2) a certified copy of the statement of ownership and location for the home has been filed in the real property records of the county in which the home is located [~~the real property to which the home is attached is titled in the name of the consumer under a deed or contract for sale. A manufactured home is considered permanently attached to real property if the home is secured to a foundation and connected to a utility, including a utility providing water, electric, natural gas, propane or butane gas, or wastewater service.~~].

(b) The closing of a transaction for the acquisition of a manufactured home considered to be real property under this chapter [section] must occur at the office of a federally insured financial institution, a title insurance company [insurer], or an attorney at law. If the real property is purchased under a contract for deed [of sale], the contract must be filed in the real property records of the county in which the home is installed.

(c) Installation of a manufactured home considered to be real property under this chapter [section] must occur in a manner that satisfies the lending requirements of the Federal Housing Administration (FHA), Fannie Mae, or Freddie Mac for long-term mortgage loans or for FHA insurance. The installation of a new manufactured home must meet, in addition to applicable state standards, the manufacturer's specifications required to validate the manufacturer's warranty.

SECTION 29. If the Act of the 78th Legislature, Regular Session, 2003, relating to nonsubstantive additions to and corrections in enacted codes does not take effect, Subsections (a) and (b), Section 19A, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) A manufactured home [that] is treated [permanently attached to real property is classified and taxed] as real property only if:

(1) the owner of the home has elected to treat the home as real property as provided by Section 1201.2055, Occupations Code; and

(2) a certified copy of the statement of ownership and location for the home has been filed in the real property records of the county in which the home is located [~~the real property to which the home is attached is titled in the name of the consumer~~]

~~under a deed or contract for sale. A manufactured home is considered permanently attached to real property if the home is secured to a foundation and connected to a utility, including a utility providing water, electric, natural gas, propane or butane gas, or wastewater services.~~

(b) The closing of a transaction for the acquisition of a manufactured home considered to be real property under this section must occur at the office of a federally insured financial institution, a title insurance company, or an attorney at law. If the real property is purchased under a contract for deed [of sale], the contract must be filed in the real property records of the county in which the home is installed.

SECTION 30. Subsection (a), Section 1201.360, Occupations Code, is amended to read as follows:

(a) The seller of real property to which a new HUD-code manufactured home is permanently attached may give the initial purchaser a written warranty that combines the manufacturer's warranty and the retailer's warranty required by this subchapter if:

(1) ~~the statement of ownership and location reflects that the owner has elected to treat the home as real property [the manufacturer's certificate under Section 1201.204 is surrendered for cancellation]; [and]~~

(2) ~~the home is actually located where the statement of ownership and location reflects that it is located; and~~

(3) ~~a certified copy of the statement of ownership and location has been filed in the real property records for the county in which the home is located [a notice of attachment or certificate of attachment is filed in the real property records of the county].~~

SECTION 31. Subsection (b), Section 1201.451, Occupations Code, is amended to read as follows:

(b) Not later than the 30th day after the effective date of the transfer of ownership or the date the seller or transferor obtains possession of the necessary and properly executed documents, the seller or transferor shall forward to the purchaser or transferee the necessary, executed [department properly completed] documents. On receipt of the documents, the purchaser or transferee shall apply for the issuance of a statement of ownership and location [for the transfer of title].

SECTION 32. Section 1201.457, Occupations Code, is amended to read as follows:

Sec. 1201.457. HABITABILITY: CHANGE TO OR FROM BUSINESS USE.

(a) If the sale, exchange, or lease-purchase of a used manufactured home is to a purchaser for the purchaser's business use, the home is not required to be habitable. ~~The purchaser of the home shall file with the department an application for the issuance of a statement of ownership and location indicating that the home is reserved for business use [The seller must surrender the title to the home to the department for cancellation].~~

(b) The purchaser of a used manufactured home for business use may not sell, exchange, or lease-purchase the home for use as a dwelling unless the director issues a new statement of ownership and location indicating that the home is no longer reserved for business use [title to the home]. On the purchaser's application to the

department for issuance of a new statement of ownership and location [title], the department shall inspect the home and, if the department determines that the home is habitable, issue the statement of ownership and location [title].

SECTION 33. Subsection (c), Section 1201.459, Occupations Code, is amended to read as follows:

(c) The seal issued to the tax collector is for identification purposes only and does not imply that:

(1) the home is habitable; or

(2) a purchaser of the home at a tax sale may obtain a new statement of ownership and location [document of title] from the department without an inspection for habitability.

SECTION 34. Subsections (a) and (c), Section 1201.460, Occupations Code, are amended to read as follows:

(a) A holder of a lien recorded on the statement of ownership and location of a [department issued] manufactured home that has not been converted to real property [document of title] who sells, exchanges, or lease-purchases a repossessed manufactured home covered by that statement of ownership and location [document of title] is not required to comply with this chapter if the sale, exchange, or lease-purchase is:

(1) to or through a licensed retailer; or

(2) to a purchaser for the purchaser's business use.

(c) If the sale, exchange, or lease-purchase of the repossessed manufactured home is to a purchaser for the purchaser's business use, the lienholder shall apply to the department for the issuance of a new statement of ownership and location indicating that the home is reserved for business use [surrender the title to the department for cancellation].

SECTION 35. Subsections (b), (c), (d), and (f), Section 1201.461, Occupations Code, are amended to read as follows:

(b) A person who owns [possesses the original document of title to] a used manufactured home that is salvaged shall apply [surrender the document of title] to the director for the issuance of a new statement of ownership and location that indicates that the home is salvaged [cancellation of the title and issuance of a salvage title].

(c) If a new manufactured home is salvaged, the retailer shall remove the label and surrender the label and the manufacturer's certificate under Section 1201.204 to the director for issuance of a statement of ownership and location that indicates that the home is salvaged [salvage title].

(d) A person may not sell, convey, or otherwise transfer to a consumer in this state a manufactured home that is salvaged [for which a salvage title has been issued]. A salvaged manufactured home may be sold only to a licensed retailer or licensed rebuilder.

(f) If a salvaged manufactured home is rebuilt in accordance with this chapter and the rules of the director, the director shall, on application, issue a new statement of ownership and location that indicates that the home is no longer salvaged [document of title to replace the salvage title].

SECTION 36. Section 1201.508, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The retailer may not require a consumer to make a down payment on the acquisition of a manufactured home from the retailer's inventory until the time the installment contract is executed.

SECTION 37. Subsection (a), Section 1201.511, Occupations Code, is amended to read as follows:

(a) This section applies to a transaction in which a manufactured home is sold as personal property [and titled under Subchapter E. This section does not apply to a real estate transaction in which a manufactured home is real property under Section 2.001, Property Code].

SECTION 38. Subsection (a), Section 1201.551, Occupations Code, is amended to read as follows:

(a) The director, after notice as provided for under Section 1201.054 and a hearing as provided by Sections 1201.054 and 1201.060, may deny, permanently revoke, or suspend for a definite period and specified sales location or geographic area a license if the director determines that the applicant or license holder:

(1) knowingly and wilfully violated this chapter or a rule adopted or order issued under this chapter;

(2) unlawfully retained or converted money, property, or any other thing of value from a consumer in the form of a down payment, sales or use tax, deposit, or insurance premium;

(3) failed to timely provide to a consumer an application for a statement of ownership and location and any information necessary to complete the application [deliver a proper certificate or other document of title to a consumer];

(4) failed to give or breached a manufactured home warranty required by this chapter or by the Federal Trade Commission;

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

(6) failed to provide or file a report required by the department for the administration or enforcement of this chapter;

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

(8) acquired a criminal record during the five-year period preceding the application date that, in the opinion of the director, makes the applicant unfit for licensing; or

(9) failed to file a bond or other security for each location as required by Subchapter C.

SECTION 39. Section 1201.605, Occupations Code, is amended to read as follows:

Sec. 1201.605. ADMINISTRATIVE PENALTY. (a) The director may assess against a person who fails to obtain or maintain a license as required by this chapter an administrative penalty in an amount not to exceed \$10,000 for each violation of this chapter and:

(1) reasonable attorney's fees;

(2) administrative costs;

- (3) witness fees;
- (4) investigative costs; and
- (5) deposition expenses.

(b) The director may assess against a retailer who fails to provide information to a consumer as required by this chapter an administrative penalty in an amount not to exceed:

- (1) \$1,000 for the first violation;
- (2) \$2,000 for the second violation; and
- (3) \$4,000 for each subsequent violation.

SECTION 40. Section 347.254, Finance Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsection (c), a [A] creditor shall [may] require a consumer to pay ad valorem taxes on the manufactured home through the creditor.

(c) The escrow requirement of Subsection (a) does not apply to a transaction involving a manufactured home if the creditor is a federally insured financial institution and does not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property.

SECTION 41. Subsection (a), Section 2.001, Property Code, is amended to read as follows:

(a) Except as provided by Subsection (b), a manufactured home is personal [real] property.

SECTION 42. Subsection (b), Section 2.001, Property Code, as amended by Chapters 899 and 1055, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(b) A manufactured home is real property if:

(1) the statement of ownership and location for the home issued under Section 1201.207, Occupations Code, reflects that the owner has elected to treat the home as real property; and

(2) a certified copy of the statement of ownership and location has been filed in the real property records in the county in which the home is located

[1) the home is permanently attached to real property; and

[2) the manufacturer's certificate of origin or the original document of title is surrendered for cancellation and a notice of attachment or a certificate of attachment, as described by the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is filed in the real property records of the county in which the home is located].

SECTION 43. Subsections (c) and (i), Section 2.001, Property Code, are amended to read as follows:

(c) In this section, "consumer," "document of title," "first retail sale," "manufactured home," and "mobile home" have the meanings assigned by Chapter 1201, Occupations Code [the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)].

(i) This section does not require a retailer or retailer's agent to obtain a license under Chapter 1101, Occupations Code [The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes)].

SECTION 44. Section 11.432, Tax Code, is amended to read as follows:

Sec. 11.432. HOMESTEAD EXEMPTION FOR MANUFACTURED HOME.

(a) For a manufactured home to qualify for an exemption under Section 11.13 of this code, the application for the exemption must be accompanied by a copy of the statement of ownership and location for [a document of title to] the manufactured home issued by the manufactured housing division of the Texas Department of Housing and Community Affairs [Licensing and Regulation] under Section 1201.207, Occupations Code [19, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)], showing that the individual applying for the exemption is the owner of the manufactured home or be accompanied by a verified copy of the purchase contract showing that the applicant is the purchaser of the manufactured home.

(b) The land on which a manufactured home is located qualifies for an exemption under Section 11.13 only if:

(1) the manufactured home qualifies for an exemption as provided by Subsection (a); and

(2) the manufactured home is listed together with the land on which it is located under Section 25.08.

(c) In this section, "manufactured home" has the meaning assigned by Section 1201.003, Occupations Code [Subsection (s), Section 3, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)]; however, the term does not apply to any manufactured home which has been attached to real estate and for which the document of title has been canceled pursuant to Subsection (j) of Section 19 of said Act].

SECTION 45. Section 25.08, Tax Code, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) Except as provided by Subsections (b) through (f) [(d) of this section], an improvement may be listed in the name of the owner of the land on which the improvement is located.

(e) A manufactured home shall be listed together with the land on which the home is located if:

(1) the statement of ownership and location for the home issued under Section 1201.207, Occupations Code, reflects that the owner has elected to treat the home as real property; and

(2) a certified copy of the statement of ownership and location has been filed in the real property records in the county in which the home is located.

(f) A manufactured home shall be listed separately from the land on which the home is located if either of the conditions provided by Subsection (e) is not satisfied.

SECTION 46. Section 32.014, Tax Code, is amended by amending Subsections (a) and (b) and adding Subsections (d) and (e) to read as follows:

(a) If a manufactured home is listed together with the land on which the manufactured home is located under Section 25.08, [the ownership of the real property on which a manufactured home is affixed and the manufactured home are the same, the manufactured home shall be appraised and taxed as an improvement to the real property, and] the tax lien attaches to the land [real property] on which the manufactured home is located [regardless of the classification of the manufactured home under the Property Code].

(b) If a manufactured home is listed separately from the land on which the manufactured home is located, the [ownership of the manufactured home, whether by deed or contract for sale, and the real property on which the manufactured home is affixed are not the same, the personal property manufactured home shall be separately appraised and taxed at the same rate and on the same ad valorem basis as other single family residential structures. The] tax lien on the manufactured home does not attach to the land on which the home is located [real property when the ownership of the manufactured home and real property are different].

(d) If a manufactured home is listed together with the land on which the manufactured home is located, a taxing unit with jurisdiction to impose taxes on the land may place a lien on the manufactured home to secure payment of those taxes to the same extent that it can place a lien on the land. If a home is moved from its location and a new statement of ownership and location is not issued under Section 1201.207, Occupations Code, a taxing unit with jurisdiction to impose taxes on the land on which the manufactured home was located retains the right to record and enforce liens on that home to secure the payment of taxes, regardless of where the home is currently located.

(e) This section prevails over Chapter 1201, Occupations Code, to the extent of any conflict.

SECTION 47. Section 32.03, Tax Code, is amended by amending Subsection (c) and adding Subsection (j) to read as follows:

(c) Except to the extent that tax liability for a year exceeds the amount computed under Subsection (j)(2), a [A] bona fide purchaser for value or the holder of a lien recorded on a manufactured home document of title is not required to pay any taxes imposed on the manufactured home in a tax year that begins on or after January 1, 2001, or penalties or interest on those taxes, if the chief appraiser of the appraisal district established for the county in which the manufactured home is located, in connection with an application for a permit to transport the manufactured home under Section 623.093(d), Transportation Code, has issued a written statement that no unpaid taxes have been reported on the manufactured home due any taxing unit for which the appraisal district appraises property.

(j) For purposes of this section, unpaid taxes due a taxing unit include:

(1) all unpaid taxes and any penalty and interest due that taxing unit for a tax year preceding the current tax year; and

(2) for a manufactured home that was located in the taxing unit on January 1 of the current tax year:

(A) taxes due for the current tax year; or

(B) if taxes for the current tax year have not been levied by the taxing unit, an estimated amount of taxes computed by multiplying the taxable value of the manufactured home, according to the most recent certified appraisal roll for the taxing unit, by the taxing unit's adopted tax rate for the preceding tax year.

SECTION 48. Section 623.104, Transportation Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) Except as provided by Subsection (e), if [H] the offense involves the movement of a manufactured house over a highway, road, or street in this state without a permit issued by the department, the offense is a misdemeanor punishable by a fine of \$1,000 [\$500].

(e) If it is shown on the trial of an offense punishable under Subsection (d) that the defendant has previously been punished under Subsection (d):

(1) one time, the offense is punishable by a fine of \$2,000; or

(2) two or more times, the offense is punishable by a fine of \$4,000.

SECTION 49. Subchapter E, Chapter 623, Transportation Code, is amended by adding Section 623.105 to read a follows:

Sec. 623.105. PENALTY FOR COMPENSATING CERTAIN UNLAWFUL ACTIONS. (a) A person commits an offense if the person:

(1) provides compensation to another for the movement of a manufactured home over a highway, road, or street in this state; and

(2) knows the other person is not authorized by law to move the home.

(b) An offense under this section is a misdemeanor punishable by a fine of \$1,000.

SECTION 50. (a) In accordance with Subsection (c), Section 311.031, Government Code, which gives effect to a substantive amendment enacted by the same legislature that codifies the amended statute, the text of Sections 1201.113, 1201.209, 1201.220, and 1201.360, Occupations Code, as set out in this Act, gives effect to changes made by Chapters 899, 988, and 1367, Acts of the 77th Legislature, Regular Session, 2001.

(b) To the extent of any conflict, this Act prevails over another Act of the 78th Legislature, Regular Session, 2003, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 51. If the Act of the 78th Legislature, Regular Session, 2003, relating to nonsubstantive additions to and corrections in enacted codes takes effect, Subsections (b) and (c), Section 1201.162, Occupations Code, and Subsection (e), Section 1201.222, Occupations Code, are repealed. If that Act does not take effect, Subsection (e), Section 19A, and Subsections (b) and (c), Section 21, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are repealed.

SECTION 52. The following laws are repealed:

(1) Sections 1201.211, 1201.217, and 1201.218, Occupations Code; and

(2) Subsections (d)-(h), Section 2.001, Property Code.

SECTION 53. (a) The change in law made by this Act in amending Section 623.104, Transportation Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

(b) The changes in law made by this Act to Sections 25.08, 32.014, and 32.03, Tax Code, apply only to an ad valorem tax year that begins on or after January 1, 2004. The changes in law made to those sections do not affect a tax lien that attached to property for a tax year that began before January 1, 2004, and the law in effect immediately before January 1, 2004, is continued in effect for purposes of the tax lien.

SECTION 54. (a) Except as provided by Subsection (b) of this section:

(1) this Act takes effect June 1, 2003, if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and

(2) if this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

(b) The changes in law made by this Act to Section 1201.113, Occupations Code, and Sections 11.432, 25.08, 32.014, and 32.03, Tax Code, take effect January 1, 2004.

The Conference Committee Report was filed with the Secretary of the Senate.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolution

SR 941 by Averitt, In memory of Jo Chambers Marti of Cleburne.

Congratulatory Resolutions

SR 944 by Armbrister, Commending Michael W. Lehr of Taylor for his service to the Texas Retired Teachers Association.

SR 946 by Brimer, Commending Joni McCoy for her accomplishments.

SR 947 by Barrientos and Bivins, Commending Robyn Hadley for her service to the Texas Senate.

SR 948 by Ellis, Congratulating Jody Williams on her position as a Distinguished Visiting Professor at the University of Houston.

SR 949 by Ellis, Commending Chris Lopez on his selection as the permanent president of the class of 2003 of The University of Texas School of Law.

SR 950 by Ellis, Commending Le Andre Campbell of Houston for achieving the rank of Eagle Scout.

SR 951 by Nelson, Congratulating the Aeronautics and Space Administration team of Justin Elementary School for winning an international award.

HCR 248 (Barrientos), Recognizing Hill's Cafe in Austin as the home of the Texas Heritage Songwriters Collection.

ADJOURNMENT

On motion of Senator Whitmire, the Senate at 6:09 p.m. adjourned, in memory of Rodrigo Gonzalez Garza of San Antonio and George Allen Sizemore, until 11:00 a.m. tomorrow.

APPENDIX

COMMITTEE REPORTS

The following committee reports were received by the Secretary of the Senate in the order listed:

May 22, 2003

INTERGOVERNMENTAL RELATIONS — **HB 622, HB 1499, HB 2732, CSHB 3562**

NATURAL RESOURCES — **HB 1194, HB 2301, HB 2518, HB 2613, HB 3366, HB 3383, HB 3559, HB 3560**

STATE AFFAIRS — **CSHB 1865, CSHB 2359**

BUSINESS AND COMMERCE — **CSHB 1839, CSHB 3324, CSHB 3325**

JURISPRUDENCE — **HB 2588** (Amended)

BUSINESS AND COMMERCE — **CSHB 329**

STATE AFFAIRS — **HB 145, HB 2198**

INTERGOVERNMENTAL RELATIONS — **CSHB 249, CSHB 1247, CSHB 1387, CSHB 2036, CSHB 2313, HB 2898, CSHB 3303, SB 1955**

CRIMINAL JUSTICE — **HB 2343** (Amended), **HB 1940** (Amended), **CSHB 2703, CSHB 716, CSHB 2795, CSHB 1634**

INTERGOVERNMENTAL RELATIONS — **CSHB 1287, CSHB 2004**

EDUCATION — **HB 264, HB 447, CSHB 944, CSHB 1518, HB 1619, CSHB 1817, HB 1844** (Amended), **HB 1882, HB 1887, HB 2823, CSHB 3015**

INTERGOVERNMENTAL RELATIONS — **HB 193, HB 1087, HB 1905, HB 2801, HB 3540, HB 3624**

STATE AFFAIRS — **CSHB 1576, CSHB 1696**

NATURAL RESOURCES — **CSHB 151, CSHB 1457**

BUSINESS AND COMMERCE — **CSHB 730, CSHB 1282, CSHB 1493**

NATURAL RESOURCES — **CSHB 1534**

INTERNATIONAL RELATIONS AND TRADE — **HCR 204**

VETERAN AFFAIRS AND MILITARY INSTALLATIONS — **HB 76, HB 573, HB 1173, HB 1223, HB 1749, HB 2251, CSHB 2400, HB 2540, HB 3211, HCR 27, HCR 156, HCR 161, HJR 68, HJR 84**

INTERGOVERNMENTAL RELATIONS — **CSHB 335**

INFRASTRUCTURE DEVELOPMENT AND SECURITY — **HB 1699, HB 1784, HB 2377, HB 2650, HB 2971**

INTERGOVERNMENTAL RELATIONS — **CSHB 2308, CSHB 2931, CSHB 212, HB 1129**

HEALTH AND HUMAN SERVICES — **SB 1949, HB 253, HB 1678, HB 2099, HB 2208, HB 2609, HB 3014, HB 3122, HB 3193**

NATURAL RESOURCES — **CSSB 1914**

JURISPRUDENCE — **HB 162, HB 674, HB 3577** (Amended), **CSHB 3503, HB 2241** (Amended), **HB 1470** (Amended), **HB 3070, HB 2937, HB 2916, HB 2240** (Amended), **HB 2040, HB 1945, HB 1473**

HEALTH AND HUMAN SERVICES — **CSSB 990, CSHB 1097, CSHB 867, CSHB 2866**

CRIMINAL JUSTICE — **CSHB 2319**

SENT TO GOVERNOR

May 22, 2003

SB 57, SB 84, SB 89, SB 139, SB 153, SB 174, SB 233, SB 235, SB 249, SB 255, SB 276, SB 281, SB 404, SB 433, SB 464, SB 486, SB 532, SB 540, SB 653, SB 656, SB 710, SB 729, SB 733, SB 735, SB 898, SB 912, SB 922, SB 934, SB 935, SB 1021, SB 1035, SB 1087, SB 1090, SB 1145, SB 1280, SB 1380, SB 1507, SB 1549, SB 1714, SCR 12, SCR 23, SCR 26

**In Memory
of
Rodrigo Gonzalez Garza
Senate Resolution 603**

WHEREAS, The Senate of the State of Texas joins the citizens of San Antonio in mourning the tragic loss of Rodrigo Gonzalez Garza, who died February 25, 2003, at the age of 26; and

WHEREAS, Rodrigo grew up in San Antonio and graduated from Fox Tech High School in 1996; he enlisted in the United States Army in 1998; and

WHEREAS, A highly trained and skilled soldier, Rodrigo served as a helicopter crew chief with the 158th Aviation Regiment, 5th Battalion of the 12th Aviation Brigade, based in Giebelstadt, Germany; he had been deployed to Victory Strike III in Poland and Enduring Freedom in Kuwait; and

WHEREAS, Rodrigo gave his life while in the service of his country in the crash of a Black Hawk helicopter during nighttime training near Camp Udairi, Kuwait; and

WHEREAS, This fine young man was respected for his dedication to his military service, and he was exceptionally loyal to his country and its mission; he will be remembered, in the words of Major General Alfred Valenzuela, as a soldier who "never asked why," but rather "saluted and went"; and

WHEREAS, Rodrigo was promoted posthumously to the position of Army sergeant; and

WHEREAS, Rodrigo belonged to a very special and patriotic family headed by Ramiro and Oralia Gonzalez, whose three other sons are all serving in the United States Army; and

WHEREAS, Rodrigo lived his life to the fullest and was known for his enjoyment of woodworking and for his passion for the Toyota Tundra; and

WHEREAS, Rodrigo was a devoted son and brother and was noted for his courage, and he 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 Rodrigo Gonzalez Garza: his parents, Ramiro and Oralia Gonzalez; his sister and brother-in-law, Veronica and Rolando Valadez; his brothers and sisters-in-law, Ramiro and Ana Cecilia Gonzalez, Jr., Ricardo and Lisa Gonzalez, and Rolando and Jennifer M. Gonzalez; his paternal grandfather, Guadalupe Gonzalez; and his numerous other beloved relatives; 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 Rodrigo Gonzalez Garza.

VAN DE PUTTE

