

# SEVENTY-NINTH DAY

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TUESDAY, MAY 27, 2003

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## PROCEEDINGS

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The Senate met at 10:00 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 Right Reverend John A. McCaffrey, Saint Joseph Catholic Church, Bryan, offered the invocation as follows:

Lord, our God, we have come together in Your name to work for the good of this great State of Texas. Stay with these state Senators with Your invisible presence and pour out Your blessings on them. Make them work in a spirit of trust and love, as well as a spirit of prudence and understanding, so that they may experience an abundance of light, compassion, and peace. Let harmony reign ever among them and let them keep their eyes fixed upon You. Enable them to implement Your known will for the State of Texas, no matter what difficulty it may entail, and reward them for the good they do. Blessed are You, Lord our God, 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.

### **CO-AUTHOR OF SENATE RESOLUTION 976**

On motion of Senator Lucio, Senator Janek will be shown as Co-author of **SR 976**.

### **SENATE RESOLUTION 877**

Senator Nelson offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Gina Bullock, who has been elected youth governor of Texas for 2003-2004; and

WHEREAS, Gina is ranked first in her school class, and she has received many academic honors, including membership in the National Honor Society and the United States Achievement Academy, and she is on the National Honor Roll; and

WHEREAS, A committed volunteer, Gina has served the community as a mentor for elementary girl students and as a volunteer at the Pregnancy Crisis Center; she has also carried out public service to the homeless in New Orleans and in remote villages of Mindanao in the Philippines; and

WHEREAS, Each year, the Texas Youth and Government program of the Young Men's Christian Association in which Gina is involved provides thousands of students throughout the state an opportunity to learn firsthand how government works; and

WHEREAS, As a highly energetic and active participant in the program, Gina has authored and presented legislation, clerked and chaired a legislative committee, represented Texas at the 2002 Conference on National Affairs in North Carolina, and elected to attend the National Governors Conference in Washington, D.C., in 2003; and

WHEREAS, This exceptional young leader has demonstrated her commitment to public service, and she has brought great credit to herself, her school, and her community; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 78th Legislature, hereby commend Gina Bullock on her selection as youth governor of Texas and extend to her best wishes for continued success in her future endeavors; and, be it further

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

The resolution was again read.

The resolution was previously adopted on Wednesday, May 14, 2003.

### **GUEST PRESENTED**

Senator Nelson was recognized and introduced to the Senate Gina Bullock.

The Senate welcomed its guest.

### **SENATE RESOLUTION 942**

Senator Averitt offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize the Honorable Truman Blum for his many years of outstanding service to his community; and

WHEREAS, Truman Blum was born November 16, 1934, and was raised in rural Hamilton County; he graduated from Cranfills Gap High School, where he was the class valedictorian; he also earned degrees from Tarleton State College and Texas A&M University; and

WHEREAS, Truman married Carolyn Sealock on November 23, 1957, and the couple has enjoyed a long and fruitful marriage; they have been blessed with two children, Cynthia Lynn Blum and Charles Robert Blum, and two grandchildren; and

WHEREAS, He served as manager of the Energy Systems Department at Union Carbide Corporation for 31 years, from 1957 to 1988; and

WHEREAS, Truman Blum was a member of the Clifton City Council from 1992 to 1994, and he served as mayor of the city from 1994 to 2001; and

WHEREAS, A highly respected civic leader who has played a major role in the betterment of his community, he currently serves on the Brazos G Regional Water Planning Group; he is an active member of the local chapter of the AARP and other groups; and

WHEREAS, A fierce advocate for what is right, Truman Blum has been a loud, strong, and knowledgeable voice for a small community; instrumental in ensuring the cleanup of the Bosque River, he not only put Clifton on the map but made the city the leader for water quality issues in the Bosque Watershed; and

WHEREAS, Truman Blum is an exemplary citizen, and he deserves recognition for his years of hard work and his many accomplishments on behalf of the Clifton community; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 78th Legislature, hereby commend the Honorable Truman Blum for his exceptional work on behalf of the public good; and, be it further

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

The resolution was read and was adopted without objection.

### **GUESTS PRESENTED**

Senator Averitt was recognized and introduced to the Senate the Honorable Truman Blum; his wife, Carolyn Blum; his daughter, Cindy Hill, and her husband, Gary; and his grandson, Nathan Hill.

The Senate welcomed its guests.

### **SENATE RESOLUTION 903**

Senator West offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Tim Brown for his outstanding athletic achievements and philanthropic endeavors and to declare May 27, 2003, Tim Brown Day in Texas; and

WHEREAS, Tim Brown, a member of the Oakland Raiders Football Team, was born July 22, 1966, in Dallas; he graduated from Woodrow Wilson High School and earned a bachelor's degree from the University of Notre Dame; and

WHEREAS, At the University of Notre Dame, Tim won numerous honors for his exceptional talent as a football player; he was named the United Press International and the *Sporting News* College Player of the Year, and he was selected All-American and awarded the prestigious Heisman Trophy in 1987; and

WHEREAS, In 1988, Tim was a first-round choice of the Los Angeles Raiders, now the Oakland Raiders; a famous member of the team, he has been selected to the Pro Bowl for 10 years, and he is considered one of the best all-time wide receivers in the history of the National Football League; and

WHEREAS, Tim Brown is dedicated to working for the betterment of the community and is especially involved in projects affecting young people; notably, he has served as the host for the Mentor Mini Football Camp for fatherless boys, as the chairman of Athletes Entertainment for Kids, and as the spokesperson for Project Pass, a program promoting student achievement; and

WHEREAS, He has established The Tim Brown Foundation/DeSoto Education Foundation Golf Tournament, the Tim Brown/Woodrow Wilson Golf Tournament, and other golf and football camps and tournaments to benefit the community; and

WHEREAS, For his many volunteer endeavors on behalf of his fellowman, Tim has been recognized with the 1990 Ed Block Courage Award, the South Dallas Business and Professional Women's Club Award of Special Recognition, and numerous other honors; and

WHEREAS, Tim Brown is a nationally renowned athlete who has given of his time and energy to support important causes that bring hope and encouragement to countless young Americans; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 78th Legislature, hereby pay tribute to Tim Brown, one of our nation's most incomparable athletes and a dedicated philanthropist, and extend best wishes to him on Tim Brown Day in Texas; and, be it further

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

The resolution was read and was adopted without objection.

### **GUESTS PRESENTED**

Senator West was recognized and introduced to the Senate Tim Brown, accompanied by his parents, Eugene and Josephine Brown; his wife, Sherice; his son, Taylor; and his brother, Donald Kelly.

The Senate welcomed its guests.

### **SENATE BILL 253 WITH HOUSE AMENDMENT**

Senator Staples called **SB 253** 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 253** by substituting in lieu thereof the following:

#### **A BILL TO BE ENTITLED AN ACT**

relating to the applicability of the Texas Youth Camp Safety and Health Act to facilities or programs operated by or on the campus of an institution of higher education.

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

SECTION 1. Chapter 141, Health and Safety Code, is amended by adding Section 141.0021 to read as follows:

Sec. 141.0021. EXEMPTION. This chapter does not apply to a facility or program operated by or on the campus of an institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, that is regularly inspected by one or more local governmental entities for compliance with health and safety standards.

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 Staples moved to concur in the House amendment to **SB 253**.

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

### **SENATE BILL 155 WITH HOUSE AMENDMENTS**

Senator Zaffirini called **SB 155** 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 155** by substituting in lieu thereof the following:

#### **A BILL TO BE ENTITLED AN ACT**

relating to the protection of public freshwater areas; providing a penalty.

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

SECTION 1. (a) The legislature recognizes that the beds, bottoms, and banks of navigable rivers and navigable streams are precious and irreplaceable state resources that deserve protection.

(b) The legislature also recognizes that public access to navigable rivers, navigable streams, and the beds, bottoms, and banks of navigable rivers and streams is:

- (1) a right granted to individuals under the Texas Constitution; and
- (2) an important economic and recreational resource for the people of this state.

(c) The protection of public access to the beds, bottoms, and banks of navigable rivers and navigable streams, therefore, should not come at the cost of uncontrolled damage to the beds, bottoms, and banks of navigable rivers and streams or at the cost of infringing on private property rights.

SECTION 2. Title 5, Parks and Wildlife Code, is amended by adding Subtitle I to read as follows:

#### **SUBTITLE I. PROTECTED FRESHWATER AREAS**

#### **CHAPTER 90. ACCESS TO PROTECTED FRESHWATER AREAS**

**Sec. 90.001. DEFINITIONS.** In this chapter:

(1) "Emergency" means a condition or circumstance in which a person reasonably believes that an individual has sustained serious bodily injury or is in imminent danger of serious bodily injury or that property has sustained significant damage or destruction or is in imminent danger of significant damage or destruction.

(2) "Motor vehicle" means any wheeled or tracked vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used to transport a person or thing.

(3) "Navigable river or stream" means a river or stream that retains an average width of 30 or more feet from the mouth or confluence up.

(4) "Protected freshwater area" means that portion of the bed, bottom, or bank of any navigable river or stream that lies at or below the gradient boundary of the river or stream. The term does not include that portion of a bed, bottom, or bank that lies below tidewater limits.

Sec. 90.002. OPERATION OF MOTOR VEHICLE IN PROTECTED FRESHWATER AREA PROHIBITED. Except as provided by Section 90.003 or 90.004, a person may not operate a motor vehicle in or on a protected freshwater area on or after January 1, 2004.

Sec. 90.003. EXEMPTIONS. (a) Section 90.002 does not apply to:

(1) a state, county, or municipal road right-of-way;

(2) a private road crossing established on or before December 31, 2003; or

(3) operation of a motor vehicle by:

(A) a federal, state, or local government employee if operation of a motor vehicle is necessary for conducting official business;

(B) a person if operation of a motor vehicle is necessary for reasonable purposes related to usual and customary agricultural activities;

(C) a person if operation of a motor vehicle is necessary to and is authorized by a mineral lease;

(D) a person if operation of a motor vehicle is necessary to and authorized by a crossing easement granted by the General Land Office under the Natural Resources Code;

(E) a person if operation of a motor vehicle is necessary to an activity authorized by Chapter 86;

(F) a person in response to an emergency;

(G) a person if operation of a motor vehicle is necessary for the lawful construction, operation, or maintenance of equipment, facilities, or structures used for:

(i) the production, transportation, transmission, or distribution of electric power;

(ii) the provision of telecommunications services or other services delivered through a cable system;

(iii) the transportation of aggregates, oil, natural gas, coal, or any product of oil, natural gas, or coal;

(iv) the production, treatment, or transportation of water or wastewater; or

(v) dredge material disposal placement;

(H) an owner of the uplands adjacent to a protected freshwater area, the owner's agent, lessee, sublessee, or the lessee or sublessee's agent, representative, licensee, invitee, or guest for reasonable purposes related to usual and customary operation of:

(i) a camp regulated under Chapter 141, Health and Safety Code; or

(ii) a retreat facility owned and operated by a nonprofit corporation chartered under the laws of this state before January 1, 1970; or

(I) an owner of the adjacent uplands on both sides of a protected freshwater area and the owner's agents, employees, representatives, and lessees only for the purpose of accessing the owner's property on the opposite side of the protected freshwater area when no reasonable alternate access is available.

(b) This chapter does not apply to any river with headwaters in a state other than Texas and a mouth or confluence in a state other than Texas.

(c) A person exempt under this section who operates a motor vehicle in or on a protected freshwater area shall do so in a manner that avoids, to the extent reasonably possible, harming or disturbing vegetation, wildlife, or wildlife habitat within the protected freshwater area. A person exempt under this section who is crossing a protected freshwater area shall cross by the most direct feasible route.

Sec. 90.004. LOCAL RIVER ACCESS PLAN. (a) A county, municipality, or river authority may adopt a written local plan to provide access to a protected freshwater area located within the county's geographical boundaries or the river authority's or municipality's jurisdiction.

(b) A local plan adopted under Subsection (a) may:

(1) notwithstanding Section 90.002, allow limited motor vehicle use in a protected freshwater area;

(2) provide for the county, municipality, or river authority to collect a fee from a person accessing a protected freshwater area; or

(3) establish other measures consistent with the policy and purposes of this chapter.

(c) Before a local plan adopted under Subsection (a) may take effect, a county, municipality, or river authority must file the plan with the department. A local plan does not take effect until the plan is approved in writing by the department.

(d) The department may approve, disapprove, or modify a local plan filed under Subsection (c). In determining whether to approve, disapprove, or modify a local plan, the department shall consider whether the plan:

(1) protects fish, wildlife, water quality, and other natural resources;

(2) protects public safety;

(3) provides for adequate enforcement;

(4) coordinates with adjacent and overlapping jurisdictions;

(5) provides for and publicizes adequate public access to a protected freshwater area;

(6) provides for adequate public services relating to access to a protected freshwater area; and

(7) protects private property rights.

(e) The department by rule may adopt additional criteria or procedures to govern approval of local plans. Lack of rules adopted under this section alone is not a sufficient basis for rejecting a local plan.

(f) The department may conduct periodic reviews of a local plan filed under Subsection (c) to monitor the effectiveness of the plan.

(g) A person who has reason to believe that a local plan filed under Subsection (c) does not comply with this section may file a petition for revocation of the plan with the department.

(h) The department shall revoke approval of a local plan if the department finds, as a result of a periodic review conducted under Subsection (f) or a petition for revocation filed under Subsection (g), that the plan as implemented fails to meet any of the criteria for approval established by Subsection (d).

Sec. 90.005. ASSISTANCE FROM DEPARTMENT. (a) The department shall assist a requesting county, municipality, or river authority in developing a local plan.

(b) A county, municipality, or river authority implementing a local plan shall remit to the department 20 percent of the county's, municipality's, or river authority's gross receipts from fees charged under Section 90.004(b)(2) to offset the department's administrative costs associated with implementing this chapter.

Sec. 90.006. STUDIES. The department may conduct studies necessary to implement this chapter.

Sec. 90.007. LANDOWNER RIGHTS. (a) A prescriptive easement over private property cannot be created by recreational use of a protected freshwater area, including by portage over or around barriers, scouting of obstructions, or crossing of private property to or from a protected freshwater area.

(b) Nothing in this section shall limit the right of a person to navigate in, on, or around a protected freshwater area.

Sec. 90.008. PUBLIC ACCESS. (a) Except as otherwise allowed by law, a person may not restrict, obstruct, interfere with, or limit public recreational use of a protected freshwater area.

(b) This section does not allow the public to use private property to gain access to a protected freshwater area without permission of the landowner.

Sec. 90.009. MOTOR VEHICLE RECREATION SITES. (a) The department shall establish a program to identify and to facilitate the development of motor vehicle recreation sites that are not located in or on a protected freshwater area. The department shall seek the cooperation of political subdivisions, landowners, nonprofit groups, and other interested persons in identifying and facilitating the development of motor vehicle recreation sites under this subsection.

(b) The department shall seek and use funding from the federal government and other sources outside the general revenue fund to identify and facilitate the development of motor vehicle recreation sites under Subsection (a).

Sec. 90.010. ENFORCEMENT. All peace officers of this state shall enforce the provisions of this chapter.

Sec. 90.011. PENALTY. (a) A person commits an offense if the person violates Section 90.002 or 90.008.

(b) Except as provided by Subsection (c), an offense under Subsection (a) is a Class C misdemeanor.



(c) If it is shown on the trial of an offense under this section that the defendant was previously convicted two or more times under Section 90.002 or 90.008, on conviction the defendant shall be punished for a Class B misdemeanor.

(d) Each violation under this section is a separate offense.

(e) Notwithstanding Section 12.403 of this code, Subchapter B, Chapter 12, Penal Code, applies to punishments under this section.

SECTION 3. The Parks and Wildlife Department shall submit to the legislature a report regarding the department's identification and development of motor vehicle recreation sites under Section 90.009, Parks and Wildlife Code, as added by this Act, not later than September 1, 2004.

SECTION 4. This Act takes effect September 1, 2003.

### **Floor Amendment No. 1**

Amend **CSSB 155** in SECTION 2 of the bill, in added Section 90.004, Parks and Wildlife Code (House committee printing, page 6, between lines 19 and 20), by inserting the following:

(i) The department may adopt rules necessary to implement this section and Section 90.002, including rules relating to locations from which a person may launch or retrieve a vessel by trailer from the banks of a protected freshwater area. For purposes of this subsection, "vessel" has the meaning assigned by Section 12.101.

### **Floor Amendment No. 2**

Amend **CSSB 155** in SECTION 2 of the bill, in Subsection (b), added Section 90.004, Parks and Wildlife Code, between "area" and the semicolon (House committee printing, page 5, line 10), by inserting "the amount of which may not exceed the estimated cost that the county, municipality, or river authority incurs by allowing the limited use of motorized vehicles in protected freshwater areas within its jurisdiction".

The amendments were read.

Senator Zaffirini moved to concur in the House amendments to **SB 155**.

The motion prevailed by a viva voce vote.

### **SENATE BILL 1439 WITH HOUSE AMENDMENT**

Senator Shapleigh called **SB 1439** from the President's table for consideration of the House amendment to the bill.

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

### **Amendment**

Amend **SB 1439** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to federal matching funds for certain projects at military facilities in this state.

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

SECTION 1. Subchapter A, Chapter 431, Government Code, is amended by adding Section 431.017 to read as follows:

Sec. 431.017. MILITARY FACILITIES PROJECTS: MATCHING FEDERAL FUNDS. If the governor, after consulting with the adjutant general and the executive director of the Texas Military Facilities Commission, finds that the state is eligible for federal matching funds for projects at military facilities in this state, the governor may direct that money appropriated for the purpose be used to obtain the federal matching funds.

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

The amendment was read.

Senator Shapleigh moved to concur in the House amendment to **SB 1439**.

The motion prevailed by a viva voce vote.

### SENATE BILL 1565 WITH HOUSE AMENDMENTS

Senator Madla called **SB 1565** 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 1565** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to allowing a municipality to create a defense adjustment management authority; authorizing taxes and bonds.

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

SECTION 1. Chapter 375, Local Government Code, is amended by adding Subchapter O to read as follows:

#### SUBCHAPTER O. DEFENSE ADJUSTMENT MANAGEMENT AUTHORITY

Sec. 375.301. LEGISLATIVE FINDINGS; PURPOSES. (a) The legislature finds that:

(1) the closure of certain defense bases has had a negative impact on the economic development of the areas within the former defense bases and the areas in the general vicinity of the former defense bases and that the creation of the specific type of authority provided for in this subchapter is essential to accomplish the purposes of Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution;

(2) it is an appropriate role for a municipality to foster economic opportunity, job generation, and capital investment by promoting a favorable business climate, preparing the workforce for productive employment, and supporting infrastructure development in areas around defense bases that are intended to be annexed by the municipality; and

(3) the programs designed to create a competent and qualified workforce are essential both to the economic growth and vitality of many municipalities in this state and to the elimination of unemployment and underemployment in those municipalities.

(b) The programs authorized by this subchapter are in the public interest, promote the economic welfare of this state, and serve the public purpose of developing and diversifying the economy of this state and of eliminating unemployment and underemployment in this state.

Sec. 375.302. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter shall be liberally construed in conformity with the findings and purposes stated in Section 375.301.

(b) Except as provided by this subchapter, the other provisions of this chapter apply to an authority created under this subchapter.

Sec. 375.303. DEFINITIONS. In this subchapter:

(1) "Authority" means a defense adjustment management authority created under this subchapter.

(2) "Eligible project" means a program authorized by Section 379A.051 and a project as defined by Sections 2(11) and 4B(a)(2), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes). Notwithstanding this definition, seeking a charter for or operating an open-enrollment charter school authorized by Subchapter D, Chapter 12, Education Code, shall not be an eligible project.

Sec. 375.304. ELIGIBILITY FOR CREATION BY MUNICIPALITY. (a) The governing body of a municipality by resolution or ordinance may create an authority in an area that is:

(1) in the same county as a military installation or facility that is:

(A) closed or realigned under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687 note) and its subsequent amendments; or

(B) a base efficiency project as defined by Section 378.001, as added by Chapter 1221, Acts of the 76th Legislature, Regular Session, 1999; and

(2) in the extraterritorial jurisdiction of a municipality with a population of at least 1.1 million and that has been annexed for limited purposes by the municipality under Subchapter F, Chapter 43.

(b) Subchapter B and Sections 375.041 and 375.042 do not apply to this subchapter.

Sec. 375.305. HEARING ON CREATION OF AUTHORITY. (a) Not earlier than the 60th day or later than the 30th day before the date the governing body of the municipality creates the authority, the governing body of the municipality shall hold two public hearings to consider the creation of the proposed authority. The municipality must publish notice of each public hearing in a newspaper of general circulation in the area of the proposed authority at least seven days before each public hearing.

(b) The notice required by Subsection (a) must state:

(1) the date, time, and place for the public hearing;

(2) the boundaries of the proposed authority, including a map of the proposed authority; and

(3) the powers of the proposed authority, including the power to levy assessments and to impose a sales and use tax.

Sec. 375.306. BOARD OF DIRECTORS. (a) The board consists of 15 directors.

(b) The municipality shall appoint six members of the board.

(c) The county in which the municipality is primarily located shall appoint six members of the board.

(d) School districts whose boundaries overlap with an authority shall collectively appoint three members of the board.

(e) Directors are appointed for terms of two years. Terms of directors may be staggered, and directors may serve successive terms.

(f) A vacancy on the board is filled for the unexpired term by the governing body of the entity that appointed the director who served in the vacant position.

(g) The mayor of the municipality and the county judge of the county in which the authority is primarily located shall, alternately, appoint one director to serve as presiding officer, with the first appointment to be made by the mayor of the municipality. The presiding officers shall serve for a term of four years beginning on January 1 of the year following the appointment. The board may elect an assistant presiding officer to preside in the absence of the presiding officer or when there is a vacancy in that office. The board may elect other officers as it considers appropriate.

(h) Sections 375.061, 375.066, and 375.068 and the limitations of Section 375.072(c) do not apply to this subchapter.

Sec. 375.307. QUALIFICATIONS OF DIRECTORS. (a) Except as provided by Subsection (b), a majority of the directors of an authority must meet the qualifications of Section 375.063.

(b) Representatives or agents of a school district whose boundaries overlap with an authority or of an institution of higher education that operates facilities within an authority may serve on the board.

Sec. 375.308. POWERS OF THE AUTHORITY; MUNICIPALITY. (a) An authority:

(1) may plan, design, implement, develop, construct, and finance eligible projects as defined in this subchapter; and

(2) has the powers of a municipality under Chapter 378, as added by Chapter 1221, Acts of the 76th Legislature, Regular Session, 1999, and Chapter 380.

(b) An authority may not:

(1) issue bonds or notes without the prior approval of the governing body of the municipality that created the authority;

(2) seek a charter for or operate, within the boundaries of the authority, an open-enrollment charter school authorized by Subchapter D, Chapter 12, Education Code; or

(3) levy ad valorem property taxes.

(c) A municipality may not seek a charter for or operate an open-enrollment charter school authorized by Subchapter D, Chapter 12, Education Code, within the boundaries of the authority.

Sec. 375.309. MUNICIPAL ANNEXATION OF AREA IN AN AUTHORITY.

(a) A municipality that creates an authority under this subchapter may annex all or part of the territory located in the authority under Chapter 43.

(b) Annexation of territory located in the authority does not affect the operation of the authority.

(c) Creation of an authority does not:

(1) affect the power of the municipality to designate all or part of an area in the authority as an industrial authority;

(2) limit a power of the municipality conferred by Chapter 42; or

(3) impose a duty on or affect the power of the municipality to provide municipal services to any area in the municipality or its extraterritorial jurisdiction that is in the authority.

Sec. 375.310. AUTHORITY MASTER PLAN. (a) An authority may only develop or construct public improvements or eligible projects in areas designated in an authority master plan approved by the board and the governing body of the municipality that created the authority.

(b) The authority master plan must include the information required for a municipal reinvestment zone under Sections 311.011(b) and (c), Tax Code, for the area of the authority. For the purposes of applying those sections, the area of the authority affected constitutes a zone.

(c) The authority shall generate the authority master plan based on the economic development needs of the property owners and constituents in the authority.

(d) After approval by the board, the authority shall submit the authority master plan to the municipality for approval. Before taking action to approve or reject the authority master plan, the municipality shall make a copy of the proposed authority master plan available to the public and hold hearings and publish notice of the hearings in the manner required by Section 375.305. The notice of the public hearings must state where a copy of the proposed authority master plan is available for inspection.

(e) The board may amend and submit the approved authority master plan to the governing body of the municipality for approval.

(f) Before approving the authority's master plan or any amendment, the municipality shall publish notice and hold hearings as required by Subsection (d).

(g) Until the authority master plan is approved by the municipality:

(1) the municipality that created the authority may not exercise the powers granted under Chapter 311 or 312, Tax Code; and

(2) a county making appointments under Section 375.306 may not exercise the powers granted under Chapter 312, Tax Code.

Sec. 375.311. SALES AND USE TAX. (a) An authority may impose a sales and use tax to support or finance public infrastructure projects and eligible projects authorized under this subchapter if the tax is authorized by a majority of the qualified voters of the authority voting at an election held for that purpose in the manner provided by Sections 375.241 and 375.242.

(b) If an authority adopts the tax authorized by Subsection (a), a tax is imposed on the receipts from the sale at retail of taxable items within the authority at the rate approved by the voters. The rate must be equal to one-eighth, one-fourth, three-eighths, or one-half of one percent.

(c) Chapter 321, Tax Code, governs the imposition, computation, administration, governance, and abolition of a tax imposed under this section.

(d) If any territory in the authority is annexed by the municipality, the municipality's sales and use tax applies in the annexed area. If the authority's sales and use tax rate, when combined with any other sales and use tax applicable in the authority, exceeds two percent, the authority's sales and use tax is abolished upon annexation.

Sec. 375.312. ZONING AND PLANNING. (a) An authority created under this subchapter has the power of a municipality under Chapters 211 and 212 in an area of the authority that is in the boundaries of the municipality's limited purpose jurisdiction. On annexation of an area of the authority by a municipality, the authority's power to regulate the area under Chapter 211 or 212 expires.

(b) The board may divide the authority into distinct areas as provided by Section 211.005 to accomplish the purposes of this chapter and Chapter 211.

Sec. 375.313. REGIONAL DEVELOPMENT AGREEMENTS. (a) An authority may enter into regional development agreements with its creating municipality, other municipalities, counties, school districts, institutions of higher education, other political subdivisions, and private interests to:

(1) promote and advance long-term economic development in the authority;

or

(2) achieve the purposes for the authority's creation and to implement the powers provided to the authority under this chapter.

(b) An authority, a municipality, a school district whose boundary overlaps with a portion of an authority, or an institution of higher education may enter into an agreement to:

(1) fund improvements to school facilities and teacher compensation of school districts or institutions of higher education in the authority; and

(2) develop programs provided for in Section 379A.051.

(c) Any agreement entered into with a school district under this section shall be designed in such a way that the school district funding under Title 2, Education Code, shall be not less than the school district would have received had the school district not entered into the agreement. This provision may be waived by a school district board of trustees by specific action suspending the provisions of this subsection.

Sec. 375.314. DISSOLUTION OF THE AUTHORITY. (a) The governing body of the municipality that created an authority under this subchapter may dissolve the authority.

(b) Before dissolution, the municipality shall publish notice and hold public hearings on the proposed dissolution in the manner provided in Section 375.305.

(c) On dissolution, the municipality shall assume the assets, debts, and other obligations of the authority.

(d) Subchapter M does not apply to this subchapter.

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.

**Floor Amendment No. 1**

Amend **CSSB 1565** as follows:

On page 7, line 11, by striking 11 through 17.

The amendments were read.

Senator Madla moved to concur in the House amendments to **SB 1565**.

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

**PHYSICIAN OF THE DAY**

Senator Estes was recognized and presented Dr. Dale Moquist of Wichita Falls as the Physician of the Day.

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

**(Senator Armbrister in Chair)****SENATE JOINT RESOLUTION 45 WITH HOUSE AMENDMENT**

Senator Madla called **SJR 45** from the President's table for consideration of the House amendment to the resolution.

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

**Floor Amendment No. 1**

Amend **SJR 45** in SECTION 2 of the joint resolution (House committee report, page 1, line 9), by striking "November 4, 2003" and substituting "September 13, 2003".

The amendment was read.

Senator Madla moved to concur in the House amendment to **SJR 45**.

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

**SENATE RESOLUTION 976**

Senator Lucio offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to pay tribute to Dorothy Ruth McFarland on the grand occasion of her 70th birthday; and

WHEREAS, Dorothy was born May 27, 1933, in Port Arthur; she married Archie McFarland, a minister from her hometown, in 1953, and the couple was blessed with a daughter, Glenda McFarland, and a son, Archie McFarland, Jr.; and

WHEREAS, An exemplary lady who is known for her kindness and generosity of spirit, Dorothy McFarland is a revered resident of Port Arthur and is now retired to the banks of Toledo Bend Lake; and

WHEREAS, Mrs. McFarland began studying piano at the age of 12, and she has served as a pianist in several churches throughout East Texas; for years, she and her husband opened their home to indigent families, the homeless, and abused children; and

WHEREAS, Throughout Dorothy's long, fulfilling, and productive life, her family has remained the focus of her life; her four grandchildren and four great-grandchildren are a source of much pride and happiness; and

WHEREAS, A beloved and respected member of her community, Dorothy McFarland is noted for her courage, her compassion for others, and her enthusiasm for living each day to the fullest; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 78th Legislature, hereby recognize Dorothy Ruth McFarland as a treasured citizen of Port Arthur and the State of Texas and extend to her best wishes for a joyous 70th birthday celebration; 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 without objection.

### GUESTS PRESENTED

Senator Lucio was recognized and introduced to the Senate Dorothy Ruth McFarland; her granddaughter, Candice McFarland; and her friend, Connie Abshire.

The Senate welcomed its guests.

### MESSAGE FROM THE HOUSE

#### HOUSE CHAMBER

Austin, Texas

May 27, 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 266**, In memory of Donald R. Lewis, M.D., of Paris, Texas.

**SB 10**, Relating to the creation of employer health benefit plan groups.  
(Amended)

**SB 16**, Relating to mentoring services programs for at-risk students in public schools.  
(Amended)

**SB 286**, Relating to the continuation and functions of the Texas Higher Education Coordinating Board.  
(Committee Substitute/Amended)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives



**CONFERENCE COMMITTEE ON  
SENATE BILL 716 DISCHARGED**

On motion of Senator Lindsay and by unanimous consent, the Senate conferees on **SB 716** were discharged.

Question — Shall the Senate concur in the House amendments to **SB 716**?

Senator Lindsay moved to concur in the House amendments to **SB 716**.

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

**SENATE BILL 282 WITH HOUSE AMENDMENTS**

Senator Jackson called **SB 282** 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 282** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the continuation and functions of the Texas State Board of Plumbing Examiners; providing penalties.

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

SECTION 1. (a) Section 1301.002, Occupations Code, is amended by amending Subdivision (4) and adding Subdivision (1-a) to read as follows:

(1-a) "Executive director" means the executive director of the Texas State Board of Plumbing Examiners.

(4) "Plumber's apprentice" means a person other than a master plumber, journeyman plumber, or tradesman plumber-limited license holder who, as the person's principal occupation, learns about and assists in the installation of plumbing, has fulfilled the requirements of and is registered by the board, and works under the supervision of a master plumber and the direct supervision of a licensed plumber.

(b) 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 Subdivision (4), Section 1301.002, Occupations Code, as set out in this section, gives effect to changes made by Section 1, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 2. Section 1301.003, Occupations Code, is amended to read as follows:

Sec. 1301.003. APPLICATION OF SUNSET ACT. The Texas State Board of Plumbing Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2015 [~~2003~~].

SECTION 3. Subsection (c), Section 1301.151, Occupations Code, is amended to read as follows:

(c) Appointments to the board shall be made without regard to the race, color, disability [ ~~creed~~], sex, religion, age, or national origin of the appointee.

SECTION 4. Section 1301.153, Occupations Code, is amended to read as follows:

Sec. 1301.153. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

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

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of building construction ~~[industry]~~; or

(2) the person's spouse ~~[related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to a person who]~~ is an officer, manager ~~[employee]~~, or paid consultant of a Texas trade association in the field of building construction ~~[regulated industry]~~.

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

SECTION 5. Section 1301.156, Occupations Code, is amended to read as follows:

Sec. 1301.156. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office ~~[appointment]~~ the qualifications required by Section 1301.151 or 1301.152;

(2) does not maintain during service on the board the qualifications required by Section 1301.151 or 1301.152;

(3) is ineligible for membership under ~~[violates a prohibition prescribed by]~~ Section 1301.153; ~~[or]~~

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

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

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

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

SECTION 6. Section 1301.157, Occupations Code, is amended to read as follows:

Sec. 1301.157. OFFICERS. (a) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(b) The board shall elect a [~~presiding officer and a~~] secretary from its membership.

SECTION 7. Subchapter C, Chapter 1301, Occupations Code, is amended by adding Section 1301.159 to read as follows:

Sec. 1301.159. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

(1) this chapter;

(2) the programs operated by the agency;

(3) the role and functions of the agency;

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

(5) the current budget for the agency;

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

(7) the requirements of:

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

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

(C) the administrative procedure law, Chapter 2001, Government Code;

and

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

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

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

SECTION 8. The heading to Subchapter D, Chapter 1301, Occupations Code, is amended to read as follows:

SUBCHAPTER D. EXECUTIVE DIRECTOR AND OTHER  
BOARD PERSONNEL

SECTION 9. Section 1301.201, Occupations Code, is amended to read as follows:

Sec. 1301.201. EXECUTIVE DIRECTOR AND STAFF. (a) The board shall employ an executive director as the executive head of the agency.

(b) The board may employ personnel as necessary to administer this chapter. The board may determine the compensation and duties of its employees and the terms of their employment.

SECTION 10. Subsection (b), Section 1301.203, Occupations Code, is amended to read as follows:

(b) A field representative may:

- (1) conduct on-site license checks to determine compliance with this chapter;
- (2) investigate consumer complaints filed under Section 1301.303;
- (3) assist municipal plumbing inspectors in enforcing this chapter; ~~and~~
- (4) issue citations as provided by Section 1301.502; and
- (5) in the performance of the field representative's other duties under this chapter, check the license, registration, or endorsement of a person regulated by the Texas Department of Licensing and Regulation in accordance with the memorandum of understanding adopted under Section 1301.259 and report any noncompliance to that agency.

SECTION 11. Subchapter D, Chapter 1301, Occupations Code, is amended by adding Sections 1301.205 through 1301.208 to read as follows:

Sec. 1301.205. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

- (1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the agency to avoid the unlawful employment practices described by Chapter 21, Labor Code; and
- (2) an analysis of the extent to which the composition of the agency's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

- (1) be updated annually;
- (2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and
- (3) be filed with the governor's office.

Sec. 1301.206. EMPLOYEE INCENTIVE PROGRAM. The executive director or the executive director's designee shall provide to agency employees information and training on the benefits and methods of participation in the state employee incentive program.

Sec. 1301.207. STANDARDS OF CONDUCT. The executive director or the executive director's designee shall provide to members of the board and to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 1301.208. SEPARATION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the agency.

SECTION 12. Subchapter E, Chapter 1301, Occupations Code, is amended by adding Sections 1301.258 through 1301.262 to read as follows:

Sec. 1301.258. BOARD COMMITTEES. (a) The board may create committees to assist the board in exercising its powers and duties.

(b) The presiding officer of the board shall appoint the members of the committees. Except as provided by Subsection (c), each committee member must be a member of the board.

(c) The presiding officer may appoint only members of the agency staff to an enforcement committee that reviews complaints and license registration and reviews endorsement applications submitted by applicants who have a criminal conviction history affected by Chapter 53.

Sec. 1301.259. MEMORANDUM OF UNDERSTANDING. (a) The board and the Texas Department of Licensing and Regulation shall enter into a memorandum of understanding to improve services and coordinate the functions of each agency.

(b) The memorandum of understanding must:

(1) require each agency to share:

(A) information technology to support the regulation and enforcement of occupational licenses; and

(B) information on regulatory practices for licensed occupations, including policy issues that affect the regulation of licensed occupations, standardization of complaint and enforcement techniques, and model licensing techniques;

(2) authorize enforcement officers from each agency to check licenses, registrations, or endorsements held by persons practicing occupations regulated by the other agency and report noncompliance to that agency; and

(3) state the circumstances when a joint investigation between the board and the Texas Department of Licensing and Regulation is appropriate.

Sec. 1301.260. POLICY ON TECHNOLOGICAL SOLUTIONS. The board shall develop and implement a policy requiring the executive director and agency employees to research and propose appropriate technological solutions to improve the agency's ability to perform its functions. The technological solutions must:

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

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

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

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

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

Sec. 1301.261. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

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

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

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

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

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

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

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

Sec. 1301.262. PLUMBING INSPECTOR CODE OF CONDUCT. The board by rule shall establish a code of conduct for licensed plumbing inspectors. The code of conduct shall require a plumbing inspector to enforce this chapter and board rules in a consistent manner across job sites.

SECTION 13. Subchapter F, Chapter 1301, Occupations Code, is amended by adding Section 1301.3015 to read as follows:

Sec. 1301.3015. PUBLIC PARTICIPATION. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the agency.

SECTION 14. Section 1301.303, Occupations Code, is amended to read as follows:

Sec. 1301.303. COMPLAINTS. (a) The board may investigate an alleged violation of this chapter by a person who:

(1) is licensed under this chapter; or

(2) performs plumbing without holding a license under this chapter.

(b) The board shall maintain a ~~[keep an information]~~ file on ~~[about]~~ each written complaint filed with the board. The file must include:

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

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

(3) the subject matter of the complaint;

(4) the name of any municipality and the county in which the conduct that is the subject of the complaint occurred;

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

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

and

(7) an explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint ~~[relating to a person licensed under this chapter].~~

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

(d) The [If a written complaint is filed with the board relating to a person licensed under this chapter, the] board, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of [parties to] the complaint of the status of the investigation [complaint] unless the notice would jeopardize an undercover investigation.

(e) The board by rule shall assign priorities and prescribe investigative procedures for investigations of complaints based on:

(1) the severity of the conduct alleged in the complaint; and

(2) the degree of harm to public health, safety, or property.

(f) The board shall maintain information about complaints, including source, type, and geographical area, to identify and address regulatory problem areas and focus enforcement in those areas.

SECTION 15. Subchapter F, Chapter 1301, Occupations Code, is amended by adding Section 1301.304 to read as follows:

Sec. 1301.304. INVESTIGATION OF COMPLAINTS. (a) The enforcement committee or an employee designated by the enforcement committee may investigate an alleged violation of this chapter or a board rule that is reported to the board.

(b) The enforcement committee shall determine whether a person has committed the violation and shall recommend appropriate sanctions to the board or, if the enforcement committee determines that the complaint is without merit, dismissal of the complaint.

(c) The board shall conduct joint investigations with the Texas Department of Licensing and Regulation as circumstances require.

SECTION 16. Section 1301.351, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) A license holder who is supervising and controlling under Subsection (a)(2) the work of a person engaged in the business of plumbing in the construction of a new one-family or two-family dwelling in an unincorporated area of the state must have training and management responsibility for, and shall review and inspect, the person's work. The license holder is not required to provide continuous or uninterrupted on-the-job oversight of the person's work.

SECTION 17. Subchapter G, Chapter 1301, Occupations Code, is amended by adding Sections 1301.3521 and 1301.3522 to read as follows:

Sec. 1301.3521. EXAMINATION FEE REFUND. (a) The board shall refund the examination fee paid by an applicant who:

(1) provides advance notice of the applicant's inability to take the examination; or

(2) is unable to take the examination because of an emergency.

(b) The board shall adopt rules that establish the required notification period and the emergency situations that warrant a refund.

Sec. 1301.3522. EXAMINATION REVIEW COURSE. (a) The board shall develop a review course in English and Spanish to assist license applicants in preparation for each license examination offered by the board. If the board provides the review course, the board may charge a fee to an applicant who applies to take the review course.

(b) The board may provide the review course training materials to private course providers for a fee determined by the board.

SECTION 18. Subchapter G, Chapter 1301, Occupations Code, is amended by adding Section 1301.3541 to read as follows:

Sec. 1301.3541. APPRENTICE REGISTRATION REQUIREMENTS. The board by rule may adopt registration requirements for plumber's apprentices, including training and education requirements.

SECTION 19. Section 1301.358, Occupations Code, is amended to read as follows:

Sec. 1301.358. OUT-OF-STATE APPLICANTS; PROVISIONAL LICENSE.

(a) The board may waive any prerequisite to obtaining a license [~~requirement under this chapter~~] for an applicant after reviewing the applicant's credentials and determining that the applicant [~~who~~] holds a license issued by another jurisdiction [~~state~~] that has licensing requirements substantially equivalent to those [~~the requirements~~] of this state.

(b) The board may issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as a plumber for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the board relating to the practice of plumbing; and

(3) is sponsored by a person licensed by the board under this chapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(c) The board may waive the requirement of Subsection (b)(3) for an applicant if the board determines that compliance with that subdivision would be a hardship to the applicant.

(d) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this chapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Subsection (a); or

(2) the provisional license holder passes the part of the examination under Section 1301.352 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of plumbing in this state and:

(A) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this chapter; and

(B) the provisional license holder satisfies any other licensing requirements under this chapter.

(e) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(f) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.



SECTION 20. (a) Section 1301.403, Occupations Code, is amended to read as follows:

Sec. 1301.403. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a license, endorsement, or registration may renew an unexpired license, endorsement, or registration by paying the required renewal fee to the agency [board] before the expiration date of the license, endorsement, or registration. A person whose license, endorsement, or registration has expired may not engage in activities that require a license, endorsement, or registration until the license, endorsement, or registration has been renewed.

(b) A person whose license or endorsement has been expired for 90 days or less may renew the license or endorsement by paying to the agency a renewal fee that is equal to 1-1/2 times the normally [board the] required renewal fee [and a fee equal to half of the examination fee for the license or endorsement]. A person whose registration has been expired for 90 days or less may renew the registration by paying to the board a renewal fee that is equal to 1-1/2 times the normally required renewal fee [and a fee equal to half of the registration fee].

(c) A person whose license or endorsement has been expired for more than 90 days but less than two years may renew the license or endorsement by paying to the agency a renewal fee that is equal to two times the normally required renewal fee [board all unpaid renewal fees and a fee that is equal to the examination fee for the license or endorsement]. A person whose registration has been expired for more than 90 days but less than two years may renew the registration by paying to the board a renewal fee that is equal to two times the normally required renewal fee [all unpaid renewal fees and a fee that is equal to the registration fee].

(d) A person whose license, endorsement, or registration has been expired for two years or more may not renew the license, endorsement, or registration. The person may obtain a new license, endorsement, or registration by [~~submitting to reexamination and~~] complying with the requirements and procedures, including the examination requirements, for obtaining an original license, endorsement, or registration.

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

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

(b) 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 Section 1301.403, Occupations Code, as set out in this section, gives effect to changes made by Section 14, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 21. (a) Section 1301.451, Occupations Code, is amended to read as follows:

Sec. 1301.451. DISCIPLINARY POWERS OF BOARD. (a) The board shall revoke, suspend, or refuse to renew a license, endorsement, or registration or shall reprimand a holder of a license, endorsement, or registration for a violation of this chapter or a rule of the board ~~[On determining that a person who holds a license or endorsement or is registered under this chapter engaged in conduct for which the person is subject to disciplinary action under Section 1301.452, the board shall:~~

~~[(1) revoke or suspend the person's license, endorsement, or registration;~~

~~[(2) probate suspension of the person's license, endorsement, or registration;~~

~~or~~

~~[(3) reprimand the person].~~

(b) A person whose license, endorsement, or registration has been revoked may not apply for a new license, endorsement, or registration before the first anniversary of the date of revocation.

(c) The board may place on probation a person whose license, endorsement, or registration is suspended. If a license, endorsement, or registration suspension is probated, the board may require the person:

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

(2) to limit practice to the areas prescribed by the board; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(d) The board by rule shall:

(1) adopt written guidelines to ensure that probation is administered consistently; and

(2) develop a system to track compliance with the probation requirements.

(b) 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 Section 1301.451, Occupations Code, as set out in this section, gives effect to changes made by Section 12, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 22. Subchapter I, Chapter 1301, Occupations Code, is amended by adding Sections 1301.4521 and 1301.4522 to read as follows:

Sec. 1301.4521. CONSEQUENCES OF CRIMINAL CONVICTION. (a) The board shall adopt rules in compliance with the guidelines authorized by Chapter 53 relating to criminal convictions.

(b) The board shall adopt a method to review the agency's compliance with Chapter 53 and the rules adopted under this section.

Sec. 1301.4522. REVIEW OF APPLICATION. (a) The enforcement committee may approve, without board approval, the application for a license, endorsement, or registration of a person who has a criminal conviction if the enforcement committee finds that the criminal conviction does not directly relate to the duties and responsibilities of the business of plumbing in accordance with the rules adopted by the board under Section 1301.4521.

(b) If the enforcement committee determines that a person is ineligible for a license, endorsement, or registration based on the person's criminal conviction, the person may request a hearing before an administrative law judge of the State Office of Administrative Hearings to review the enforcement committee's determination.

(c) After receipt of the administrative law judge's proposed findings of fact and conclusions of law, the board shall determine the applicant's eligibility. The board shall provide an applicant who is denied a license a written statement containing the reasons for the board's action.

(d) An applicant who has a criminal conviction may appear before the board or the enforcement committee to present information relating to the applicant's criminal conviction.

SECTION 23. Section 1301.502, Occupations Code, is amended to read as follows:

Sec. 1301.502. CITATION. (a) A field representative, water district plumbing inspector, or, within the jurisdiction of the municipality, municipal plumbing inspector may issue a citation to a person who engages in conduct described by Section 1301.508.

(b) The board shall adopt guidelines relating to the circumstances when a field representative may issue a citation. The guidelines must encourage the use of other enforcement measures, including imposition of administrative penalties, before the issuance of a citation.

SECTION 24. Subchapter J, Chapter 1301, Occupations Code, is amended by adding Sections 1301.5045 and 1301.5071 to read as follows:

Sec. 1301.5045. CEASE AND DESIST ORDER. (a) If it appears to the board that a person is violating this chapter or a rule adopted under this chapter, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter N.

Sec. 1301.5071. INFORMAL SETTLEMENT CONFERENCE; RESTITUTION. (a) The board by rule shall establish procedures under which an informal settlement conference is conducted to resolve a complaint against a person licensed under this chapter.

(b) Subject to Subsection (c), the board may order a person licensed under this chapter to pay restitution to a person as provided in an agreement resulting from an informal settlement conference instead of or in addition to assessing an administrative penalty under Subchapter N.

(c) The amount of restitution ordered as provided by an agreement resulting from an informal settlement conference may not exceed the amount the person paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a restitution order.

SECTION 25. Chapter 1301, Occupations Code, is amended by adding Subchapters M and N to read as follows:

SUBCHAPTER M. INTERAGENCY COOPERATION  
AND REGULATION

Sec. 1301.651. DEFINITION. In this subchapter, "local workforce development board" means a board created under Subchapter F, Chapter 2308, Government Code.

Sec. 1301.652. PUBLIC EDUCATION EFFORT. (a) The board and the Texas Workforce Commission shall, through the local workforce development boards, coordinate efforts to educate the public about the plumbing profession and the resources available to employers for the recruitment and training of plumbers, including providing:

(1) each local workforce development board with:

(A) information about the licensing requirements for the plumbing profession; and

(B) available statistical data regarding plumbing; and

(2) a link to each agency's Internet site and to the Internet sites of other local workforce development boards.

(b) The board may, during public and industry awareness seminars, raise awareness of the career ladder in the plumbing industry and the opportunities that plumbing apprenticeships offer.

(c) This section applies to the extent that the plumbing profession is designated as an occupation in demand by a local workforce development board.

SUBCHAPTER N. ADMINISTRATIVE PENALTY

Sec. 1301.701. IMPOSITION OF PENALTY. The board may impose an administrative penalty on a person who violates this chapter or a rule or order adopted under this chapter.

Sec. 1301.702. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstance, extent, and gravity of any prohibited act;  
and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts made to correct the violation; and

(6) any other matter that justice may require.

(c) The board by rule or through procedures adopted by the board and published in the Texas Register shall develop a standardized penalty schedule based on the criteria listed in Subsection (b).

Sec. 1301.703. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the enforcement committee determines that a violation occurred, the enforcement committee may issue to the board a report stating:

(1) the facts on which the determination is based; and

(2) the committee's recommendation on the imposition of the penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the enforcement committee shall give written notice of the report to the person.

(c) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 1301.704. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended penalty of the enforcement committee; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the enforcement committee, the board by order shall approve the determination and impose the recommended penalty.

Sec. 1301.705. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the enforcement committee shall set a hearing and give written notice of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Sec. 1301.706. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the board's order given to the person must include a statement of the right of the person to judicial review of the order.

Sec. 1301.707. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

Sec. 1301.708. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 1301.707, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account;

or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the board's 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) sending a copy of the affidavit to the enforcement committee by certified mail.

(b) If the enforcement committee receives a copy of an affidavit under Subsection (a)(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.

(c) 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.

Sec. 1301.709. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Sec. 1301.710. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 1301.711. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Sec. 1301.712. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Sec. 1301.713. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

SECTION 26. Section 51.351, Occupations Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) A department employee may check the license, registration, or endorsement of a person regulated by the Texas State Board of Plumbing Examiners in accordance with the memorandum of understanding under Section 1301.259 and report any noncompliance to that agency.

(d) The department shall conduct joint investigations with the Texas State Board of Plumbing Examiners as circumstances require.

SECTION 27. Section 2308.303, Government Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) A board shall educate the public about the plumbing profession and the resources available to employers for the recruitment and training of plumbers as provided by Section 1301.652, Occupations Code.

(f) These educational efforts may be conducted to the extent that the plumbing profession is designated as an occupation in demand by a board.

SECTION 28. (a) Not later than January 1, 2004, the Texas State Board of Plumbing Examiners shall adopt the rules required by Section 1301.4521, Occupations Code, as added by this Act.

(b) Not later than September 1, 2004, the Texas State Board of Plumbing Examiners shall:

(1) adopt the written guidelines required by Subsection (d), Section 1301.451, Occupations Code, as added by this Act; and

(2) adopt the administrative penalty schedule required by Section 1301.702, Occupations Code, as added by this Act.

(c) The changes in law made by Section 1301.153, Occupations Code, as amended by this Act, and Section 1301.159, Occupations Code, as added by this Act, in the prohibitions on or qualifications of members of the Texas State Board of Plumbing Examiners do not affect the entitlement of a member serving on the Texas State Board of Plumbing Examiners immediately before September 1, 2003, to continue to serve and function as a member of the Texas State Board of Plumbing Examiners for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

(d) The change in law made by this Act to Chapter 1301, Occupations Code, relating to the investigation of a complaint applies only to a complaint filed with the Texas State Board of Plumbing Examiners on or after the effective date of this Act. A complaint filed with the board before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 29. 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 30. This Act takes effect September 1, 2003.

## **Floor Amendment No. 2**

Amend **CSSB 282** by adding the following appropriately numbered SECTIONS to the bill and renumbering the SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. Section 1301.052, Occupations Code, is amended to read as follows:

Sec. 1301.052. WORK INSIDE OR OUTSIDE MUNICIPALITIES. A person is not required to be licensed under this chapter to perform plumbing ~~[on a property that is]~~:

(1) ~~[located in a subdivision or on a tract of land that is not required to be platted under Section 232.0015, Local Government Code; or~~

~~[(2) not connected to a public water system and is located]~~ outside a municipality; or

(2) inside a municipality with fewer than 5,000 inhabitants, unless an ordinance of the municipality requires the person to be licensed.

SECTION \_\_\_\_\_. In accordance with Section 311.031(c), Government Code, which gives effect to a substantive amendment enacted by the same legislature that codifies the amended statute, the text of Section 1301.052, Occupations Code, as set out in Section \_\_\_\_ of this Act, gives effect to changes made by Chapter 791, Acts of the 77th Legislature, Regular Session, 2001.

### **Floor Amendment No. 3**

Amend Floor Amendment No. 2 to **CSSB 282** by striking the text of the amendment and substituting the following:

SECTION \_\_\_\_\_. Section 1301.052, Occupations Code, is amended to read as follows:

Sec. 1301.052. WORK INSIDE OR OUTSIDE MUNICIPALITIES. A person is not required to be licensed under this chapter to perform plumbing, other than plumbing performed in conjunction with new construction, on a property that is:

(1) located in a subdivision or on a tract of land that is not required to be platted under Section 232.0015, Local Government Code; or

(2) not connected to a public water system and is located] outside a municipality; or

(3) inside a municipality with fewer than 5,000 inhabitants, unless an ordinance of the municipality requires the person to be licensed.

SECTION \_\_\_\_\_. In accordance with Section 311.031(c), Government Code, which gives effect to a substantive amendment enacted by the same legislature that codifies the amended statute, the text of Section 1301.052, Occupations Code, as set out in Section \_\_\_\_ of this Act, gives effect to changes made by Chapter 791, Acts of the 77th Legislature, Regular Session, 2001.

### **Floor Amendment No. 1 on Third Reading**

Amend **CSSB 282** on third reading by striking Section 1301.052, Occupations Code, Subsection 2 and replacing it with the following:

(2) ~~not connected to a public water system and is located]~~ located outside a municipality; or

### **Floor Amendment No. 3 on Third Reading**

Amend Floor Amendment No. 1 on Third Reading to **CSSB 282** on third reading by striking the text of the amendment and substituting the following:

Section 1301.052, Occupations Code, is amended to read as follows:



Sec. 1301.052. WORK INSIDE OR OUTSIDE MUNICIPALITIES. A person is not required to be licensed under this chapter to perform plumbing, other than plumbing performed in conjunction with new construction, on a property that is:

(1) located in a subdivision or on a tract of land that is not required to be platted under Section 232.0015, Local Government Code; or

(2) not connected to a public water system and is located outside a municipality; or

(3) located outside a municipality and connected to a public water system that does not require a license to perform plumbing; or

(4) inside a municipality with fewer than 5,000 inhabitants, unless an ordinance of the municipality requires the person to be licensed.

The amendments were read.

Senator Jackson moved to concur in the House amendments to **SB 282**.

The motion prevailed by a viva voce vote.

#### SENATE RESOLUTION 754

Senator Gallegos offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize the Aldine Independent School District for its outstanding work in educating the children of Aldine; and

WHEREAS, Aldine Independent School District ranks among the state's high performing school districts according to the Texas Education Agency; beginning in 1996, the district earned Recognized ratings for six consecutive years from the Texas Education Agency; the district has also been ranked among the state's top 20 school districts in educating African American and Latino students; and

WHEREAS, Twenty schools in the district were recently named high performing schools by the Just For the Kids Foundation for sustaining high academic performance in 2000, 2001, and 2002 in various academic categories, including writing, reading, science, mathematics, social studies, and end of course exams; and

WHEREAS, The Just For the Kids Foundation, along with the National Center for Educational Accountability, has been investigating educational best practices in the State of Texas for the last three years; and

WHEREAS, The Just For the Kids Foundation is a nonprofit organization whose mission is to raise academic standards and increase student achievement in schools in Texas; the National Center for Educational Accountability is a collaborative effort of the Education Commission of the State of Texas, The University of Texas at Austin, and the Just For the Kids Foundation to improve learning through the effective use of school and student data and the identification of best practices; and

WHEREAS, The 20 schools in the Aldine Independent School District named high performing by the Just For the Kids Foundation are Aldine Senior High School, Aldine Ninth Grade School, Aldine Middle School, Drew Academy, Eisenhower Senior High School, Eisenhower Ninth Grade School, Thompson Elementary School, Gray Elementary School, Hambrick Middle School, Hoffman Middle School, MacArthur Senior High School, MacArthur Ninth Grade School, Mendel Elementary

School, Nimitz Ninth Grade School, Oleson Elementary School, Sammons Elementary School, Stephens Elementary School, Stovall Middle School, Grantham Academy, and Teague Middle School; and

WHEREAS, In 1998, the Aldine Independent School District Board was named the Outstanding School Board of Texas by the Texas Association of School Administrators; other awards include the Standards of Excellence Award and National Outstanding Marketing Award for its Child Nutrition Department; for three years, the district received the National Encore Award from *USA Weekend*, and in the 1995-1996 school year, its elementary schools were recognized by *Texas Monthly* as among the best in Texas;

WHEREAS, Students in the Aldine Independent School District have greatly benefited from the expertise and diligence of its administrators, faculty, and staff, and all associated with the school district deserve recognition for its excellent record; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 78th Legislature, hereby pay tribute to the Aldine Independent School District for its dedication to the education of the young people of Aldine and congratulate its schools for their exceptional accomplishments; and, be it further

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

The resolution was read and was adopted without objection.

#### **GUEST PRESENTED**

Senator Gallegos was recognized and introduced to the Senate Nadine Kujawa, Superintendent of Schools for the Aldine Independent School District.

The Senate welcomed its guest.

#### **SENATE RESOLUTION 975**

Senator Duncan offered the following resolution:

WHEREAS, A 50th wedding anniversary is a splendid occasion and calls for much celebration, and Dr. and Mrs. Mayes of Austin have much reason to rejoice; and

WHEREAS, Since their marriage on May 24, 1953, Dr. and Mrs. Mayes have spent 50 years together in loyalty and devotion; and

WHEREAS, The world has changed considerably during the years of their marriage, yet Dr. and Mrs. Mayes have cherished traditional family and moral values; and

WHEREAS, Over the years, their love has grown stronger as together they have experienced the joys and sorrows of everyday living; and

WHEREAS, The happy couple has been blessed with a wonderful family; their children, Lori Hartman, Mark Mayes, Lisa Mayes, and Jon Mayes, and their grandchild, Samuel Gordon Mayes, have been the source of much pride and joy; and

WHEREAS, Prior to moving to Austin, Dr. and Mrs. Mayes lived in Lubbock, where Dr. Mayes was a successful orthopedic surgeon until his retirement a few years ago; B.K. and Gordon Mayes were exemplary citizens of Lubbock, where they made many deep and lasting friendships; and

WHEREAS, The loving relationship that B.K. and Gordon share is truly an inspiration to all who know them; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 78th Legislature, hereby join the family and friends of Dr. and Mrs. Mayes in extending to them best wishes and congratulations on their 50th wedding anniversary; and, be it further

RESOLVED, That a copy of this Resolution be prepared for this distinguished couple as a memento of this grand occasion.

The resolution was read and was adopted without objection.

### GUESTS PRESENTED

Senator Duncan was recognized and introduced to the Senate B. K. and Gordon Mayes of Austin.

The Senate welcomed its guests.

### SENATE BILL 1326 WITH HOUSE AMENDMENT

Senator Carona called **SB 1326** from the President's table for consideration of the House amendment to the bill.

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

#### Floor Amendment No. 1

Amend the committee report for **SB 1326** on page 2, line 5 by inserting the words "roof pitch," in between the words "roofing," and "foundation fascia,".

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 1326**.

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

### HOUSE CONCURRENT RESOLUTION 261

The Presiding Officer laid before the Senate the following resolution:

**HCR 261**, Commemorating Memorial Day 2003.

VAN DE PUTTE

The resolution was read.

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

### SENATE BILL 1574 WITH HOUSE AMENDMENT

Senator Carona called **SB 1574** from the President's table for consideration of the House amendment to the bill.

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

#### Amendment

Amend **SB 1574** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the administration and regulation of the state's workers' compensation insurance system.

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

SECTION 1. Section 413.0511(b), Labor Code, is amended to read as follows:

(b) The medical advisor shall make recommendations regarding the adoption of rules to:

- (1) develop, maintain, and review guidelines as provided by Section 413.011, including rules regarding impairment ratings;
- (2) review compliance with those guidelines;
- (3) regulate or perform other acts related to medical benefits as required by the commission;
- (4) impose sanctions or delete doctors from the commission's list of approved doctors under Section 408.023 for:
  - (A) any reason described by Section 408.0231; or
  - (B) noncompliance with commission rules;
- (5) impose conditions or restrictions as authorized by Section 408.0231(f);
- (6) receive, and share with the medical quality review panel established under Section 413.0512, confidential information, and other information to which access is otherwise restricted by law, as provided by Sections 413.0512, 413.0513, and 413.0514 from the Texas State Board of Medical Examiners, the Texas Board of Chiropractic Examiners, or other occupational licensing boards regarding ~~[disciplinary actions imposed on]~~ a physician, chiropractor, or other type of doctor who applies for registration or is registered with the commission on the list of approved doctors; and
- (7) determine minimal modifications to the reimbursement methodology and model used by the Medicare system as necessary to meet occupational injury requirements.

SECTION 2. Section 413.0512(d), Labor Code, is amended to read as follows:

(d) A person who serves on the medical quality review panel is immune from suit and from civil liability ~~[not liable in a civil action]~~ for an act performed, or a recommendation made, within the scope of the person's functions as a member of the panel if the person acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to that person. In the event of a civil action brought against a member of the panel that arises from the person's participation on the panel, the person ~~[in good faith as a member of the panel and]~~ is entitled to the same protections afforded a commission member under Section 402.010.

SECTION 3. Section 413.0513, Labor Code, is amended to read as follows:

Sec. 413.0513. CONFIDENTIALITY REQUIREMENTS. (a) Information collected, assembled, or maintained by or on behalf of the commission under Section 413.0511 or 413.0512 constitutes an investigation file for purposes of Section 402.092[;] and ~~[that is confidential under law,]~~ may not be disclosed under Section 413.0511 or 413.0512 except as provided by that section[-

~~[(1) in a criminal proceeding;~~

~~[(2) in a hearing conducted by or on behalf of the commission;~~  
~~[(3) in a hearing conducted by another licensing or regulatory authority, as provided in the interagency agreement; or~~  
~~[(4) on a finding of good cause in an administrative or judicial proceeding involving the enforcement of this subtitle or in a disciplinary action under this subtitle].~~

(b) Confidential information, and other information to which access is restricted by law, developed by or on behalf of the commission under Section 413.0511 or 413.0512 is not subject to discovery or court subpoena in any action other than:

(1) an action to enforce this subtitle brought by the commission, an appropriate licensing or regulatory agency, or an appropriate enforcement authority; or  
(2) a criminal proceeding.

SECTION 4. Subchapter E, Chapter 413, Labor Code, is amended by adding Sections 413.0514 and 413.0515 to read as follows:

Sec. 413.0514. INFORMATION SHARING WITH OCCUPATIONAL LICENSING BOARDS. (a) This section applies only to information held by or for the commission, the Texas State Board of Medical Examiners, and Texas Board of Chiropractic Examiners that relates to a person who is licensed or otherwise regulated by any of those state agencies.

(b) The commission and the Texas State Board of Medical Examiners on request or on its own initiative, may share with each other confidential information or information to which access is otherwise restricted by law. The commission and the Texas State Board of Medical Examiners shall cooperate with and assist each other when either agency is conducting an investigation by providing information to each other that the sending agency determines is relevant to the investigation. Except as provided by this section, confidential information that is shared under this section remains confidential under law and legal restrictions on access to the information remain in effect. Furnishing information by the Texas State Board of Medical Examiners to the commission or by the commission to the Texas State Board of Medical Examiners under this Subsection does not constitute a waiver of privilege or confidentiality as established by law.

(c) Information that is received by the commission from the Texas State Board of Medical Examiners or by the Texas State Board of Medical Examiners from the commission remains confidential, may not be disclosed by the commission except as necessary to further the investigation, and shall be exempt from disclosure under Sections 402.092 and Section 413.0513.

(d) The commission and the Texas Board of Chiropractic Examiners on request or on its own initiative, may share with each other confidential information or information to which access is otherwise restricted by law. The commission and the Texas Board of Chiropractic Examiners shall cooperate with and assist each other when either agency is conducting an investigation by providing information to each other that is relevant to the investigation. Except as provided by this section, confidential information that is shared under this section remains confidential under law and legal restrictions on access to the information remain in effect unless the agency sharing the information approves use of the information by the receiving agency for enforcement purposes. Furnishing information by the Texas Board of

Chiropractic Examiners to the commission or by the commission to the Texas Board of Chiropractic Examiners under this Subsection does not constitute a waiver of privilege or confidentiality as established by law.

(e) Information that is received by the commission from the Texas Board of Chiropractic Examiners or by the Texas Board of Chiropractic Examiners remains confidential and may not be disclosed by the commission except as necessary to further the investigation unless the agency sharing the information and the agency receiving the information agree to use of the information by the receiving agency for enforcement purposes.

(f) The commission and the Texas State Board of Medical Examiners shall provide information to each other on all disciplinary actions taken.

(g) The commission and the Texas Board of Chiropractic Examiners shall provide information to each other on all disciplinary actions taken.

Sec. 413.0515. REPORTS OF PHYSICIAN AND CHIROPRACTOR VIOLATIONS. (a) If the commission or the Texas State Board of Medical Examiners discovers an act or omission by a physician that may constitute a felony, a misdemeanor involving moral turpitude, a violation of state or federal narcotics or controlled substance law, an offense involving fraud or abuse under the Medicare or Medicaid program, or a violation of this subtitle, the agency shall report that act or omission to the other agency.

(b) If the commission or the Texas Board of Chiropractic Examiners discovers an act or omission by a chiropractor that may constitute a felony, a misdemeanor involving moral turpitude, a violation of state or federal narcotics or controlled substance law, an offense involving fraud or abuse under the Medicare or Medicaid program, or a violation of this subtitle, the agency shall report that act or omission to the other agency.

SECTION 5. Section 160.006(a), Occupations Code, is amended to read as follows:

(a) A record, report, or other information received and maintained by the board under this subchapter or Subchapter B, including any material received or developed by the board during an investigation or hearing and the identity of, and reports made by, a physician performing or supervising compliance monitoring for the board, is confidential. The board may disclose this information only:

(1) in a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order;

(2) to the physician licensing or disciplinary authority of another jurisdiction, to a local, state, or national professional medical society or association, or to a medical peer review committee located inside or outside this state that is concerned with granting, limiting, or denying a physician hospital privileges;

(3) under a court order; ~~(e)~~

(4) to qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any physician or other individual is first deleted; or

(5) to the Texas Workers' Compensation Commission as provided by Section 413.0514, Labor Code.

SECTION 6. Section 408.047, Labor Code, is amended to read as follows:

Sec. 408.047. STATE AVERAGE WEEKLY WAGE. The state average weekly wage for the fiscal year beginning September 1, 2003 and ending August 31, 2004 is \$537, and for the fiscal year beginning September 1, 2004 and ending August 31, 2005 is \$539 [~~equals the annual average of the average weekly wage of manufacturing production workers in this state, as determined by the Texas Employment Commission~~].

SECTION 7. Section 413.0512(d), Labor Code, as amended by this Act, applies to a member of the medical quality review panel regardless of whether the person is a member of the panel at the time the action is brought.

SECTION 8. (a) The changes in law made by this Act apply to information maintained by or on behalf of the Texas Workers' Compensation Commission, the Texas State Board of Medical Examiners, or the Texas Board of Chiropractic Examiners without regard to the date the information is collected, compiled, developed, or shared between the agencies.

(b) 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 Carona moved to concur in the House amendment to **SB 1574**.

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

### SENATE BILL 533 WITH HOUSE AMENDMENT

Senator Carona called **SB 533** from the President's table for consideration of the House amendment to the bill.

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

#### Amendment

Amend **SB 533** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to certain practices of debt collectors and credit bureaus.

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

SECTION 1. Section 392.202, Finance Code, is amended to read as follows:

Sec. 392.202. CORRECTION OF THIRD-PARTY DEBT COLLECTOR'S OR CREDIT BUREAU'S FILES. (a) An individual who disputes the accuracy of an item that is in a third-party debt collector's or credit bureau's file on the individual and that relates to a debt being collected by the third-party debt collector may notify in writing the third-party debt collector [~~or credit bureau~~] of the inaccuracy. The third-party debt collector [~~or credit bureau~~] shall make a written record of the dispute. If the third-party debt collector does not report information related to the dispute to a credit bureau, the third-party debt collector shall cease collection efforts until an investigation of the dispute described by Subsections (b)-(e) determines the accurate amount of the debt, if any. If the third-party debt collector reports information related to the dispute to a credit bureau, the reporting third-party debt collector shall initiate

an investigation of the dispute described by Subsections (b)-(e) and shall cease collection efforts until the investigation determines the accurate amount of the debt, if any. This section does not affect the application of Chapter 20, Business & Commerce Code, to a third-party debt collector subject to that chapter [provide forms for the notice and, when requested, assist an individual in preparing the notice].

(b) Not later than the 30th day after the date a notice of inaccuracy is received, a ~~the~~ third-party debt collector who initiates an investigation ~~[or credit bureau]~~ shall send a written statement to the individual:

- (1) denying the inaccuracy;
- (2) admitting the inaccuracy; or

(3) stating that the third-party debt collector ~~[or credit bureau]~~ has not had sufficient time to complete an investigation of the inaccuracy.

(c) If the third-party debt collector ~~[or credit bureau]~~ admits that the item is inaccurate under Subsection (b), the third-party debt collector ~~[or credit bureau]~~ shall:

(1) not later than the fifth business day after the date of the admission, correct the item in the relevant file; and

(2) immediately cease collection efforts related to the portion of the debt that was found to be inaccurate and on correction of the item send, to each person who has previously received a report from the third-party debt collector ~~[or credit bureau]~~ containing the inaccurate information, notice of the inaccuracy and a copy of an accurate report.

(d) If the third-party debt collector ~~[or credit bureau]~~ states that there has not been sufficient time to complete an investigation, the third-party debt collector ~~[or credit bureau]~~ shall immediately:

- (1) change the item in the relevant file as requested by the individual;

(2) send to each person who previously received the report containing the information a notice that is equivalent to a notice under Subsection (c) and a copy of the changed report; and

- (3) cease collection efforts ~~[if the item involves a debt]~~.

(e) On completion by the third-party debt collector ~~[or credit bureau]~~ of the investigation, the third-party debt collector ~~[or credit bureau]~~ shall inform the individual of the determination of whether the item is accurate or inaccurate. If the third-party debt collector ~~[or credit bureau]~~ determines that the information was accurate, the third-party debt collector ~~[or credit bureau]~~ may again report that information and resume collection efforts.

SECTION 2. Subsection (a), Section 392.304, Finance Code, is amended to read as follows:

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

- (1) using a name other than the:

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

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



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

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

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

(5) failing to disclose, except in a formal pleading made in connection with a legal action:

(A) [clearly in any communication with the debtor] that the debt collector is attempting to collect a [consumer] debt and that any information obtained will be used for that purpose, if the communication is the initial written or oral communication with [unless the communication is for the purpose of discovering the location of] the debtor; or

(B) that the communication is from a debt collector, if the communication is a subsequent written or oral communication with the debtor;

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. Subsection (d), Section 20.06, Business & Commerce Code, is amended to read as follows:

(d) If disputed information is found to be inaccurate or cannot be verified after a reinvestigation under Subsection (a), the consumer reporting agency, unless otherwise directed by the consumer, shall promptly delete the information from the consumer's file, revise the consumer file, and provide the revised consumer report to the consumer and~~[, on the request of the consumer,]~~ to each person who requested the consumer report within the preceding six months. The consumer reporting agency may not report the inaccurate or unverified information in subsequent reports.

SECTION 4. This Act takes effect September 1, 2003.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 533**.

The motion prevailed by a viva voce vote.

### CONCLUSION OF MORNING CALL

The Presiding Officer, Senator Armbrister in Chair, at 10:55 a.m. announced the conclusion of morning call.

### HOUSE BILL 833 ON SECOND READING

On motion of Senator Janek and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 833** at this time on its second reading:

**HB 833**, Relating to certain pharmaceutical services for an injured employee receiving workers' compensation medical benefits.

The bill was read second time.

Senator Janek offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 833**, in SECTION 2 of the bill, after Subsection (b) of that section, by inserting the following:

(c) In adopting rules under Section 408.028(e), Labor Code, as added by this Act, the Texas Workers' Compensation Commission shall make any changes to the commission's rules under 28 T.A.C. Section 134.800 that are necessary to assist pharmacies in complying with the change in law made by this Act.

The floor amendment was read and was adopted without objection.

Senator Carona offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **HB 833** by adding the following appropriately numbered SECTION and renumbering the SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 413.011, Labor Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) In establishing fee guidelines, the commission shall use conversion factors that are equal to at least the following amounts:

- (1) surgery, 69.00;
- (2) radiology, 63.00;
- (3) pathology, 80.00;
- (4) anesthesia, 40.00;
- (5) general medicine, 47.00;
- (6) physical medicine, 47.00; and
- (7) evaluation and management, 47.00.

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

Yeas: Barrientos, Carona, Deuell, Ellis, Gallegos, Harris, Janek, Lucio, Madla, Shapleigh, Wentworth, West, Whitmire, Zaffirini.

Nays: Armbrister, Averitt, Brimer, Duncan, Estes, Fraser, Jackson, Lindsay, Nelson, Ratliff, Shapiro, Staples, Van de Putte, Williams.

Absent: Bivins, Hinojosa, Ogden.

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

**Floor Amendment No. 3**

Amend **HB 833** by adding the following appropriately numbered SECTION and renumbering the SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. (a) The Texas Workers' Compensation Commission shall consider a rulemaking petition based on a study funded by collaborative efforts of workers' compensation insurance carriers and pharmacy providers. The study must be designed to determine pharmacy fees paid by other payors and administrative costs and expenses incurred by pharmacy providers to process claims and payments for prescription drugs provided to individuals under the Texas workers' compensation system relative to the costs and expenses incurred in providing the drugs to self-paying individuals or individuals for whom payment is made under insurance coverage other than workers' compensation insurance.

(b) The Texas Workers' Compensation Commission shall adopt, not later than six months after the date a rulemaking petition is submitted to the commission, rules that clearly define the methodology for determining payment amounts for prescription drugs under Subtitle A, Title 5, Labor Code. The rules described by this section must take into account pharmacy fees paid by other payors and the costs and expenses that workers' compensation insurance carriers and pharmacies incur in providing prescription drugs to individuals under that subtitle and must ensure the presence of a reliable network of pharmacy providers for injured workers in this state.

(c) The Texas Workers' Compensation Commission shall pursue efforts to streamline the procedures for presenting, processing, and paying claims for prescription drugs under Subtitle A, Title 5, Labor Code, through the development of a system that is more efficient than the system in place on the effective date of this Act.

(d) The Texas Workers' Compensation Commission shall implement the requirements of this section in a budget-neutral manner and consider the findings of studies or other research funded by collaborative efforts of workers' compensation insurance carriers and pharmacy providers. If the studies are not funded by workers' compensation insurance carriers and pharmacy providers and this section cannot be implemented in a budget-neutral manner, this section may not be implemented.

(e) This section expires December 31, 2004.

The floor amendment was read and was adopted without objection.

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

**HB 833** as amended was passed to third reading without objection.

### HOUSE BILL 833 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 833** be placed on its third reading and final passage.

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

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

### SENATE RESOLUTION 953

Senator Harris offered the following resolution:

**SR 953**, In memory of Charles P. Schulze, Jr., of Irving.

The resolution was again read.

Senator Harris was recognized and introduced to the Senate Fran Bonilla, former Irving City Councilmember; Shelah-Bell Andrews, member of the Centennial Steering Committee; Herb Gears, Irving City Councilmember; and Secretary of State Gwyn Shea.

The Senate welcomed its guests and extended its sympathy.

The resolution was previously adopted on Friday, May 23, 2003.

In honor of the memory of Charles P. Schulze, Jr., of Irving, the text of **SR 953** is printed at the end of today's *Senate Journal*.

**COMMITTEE SUBSTITUTE**  
**HOUSE JOINT RESOLUTION 16 ON SECOND READING**

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHJR 16** at this time on its second reading:

**CSHJR 16**, Proposing a constitutional amendment to authorize a county, a city or town, or a junior college district to establish an ad valorem tax freeze on residence homesteads of the disabled and of the elderly and their spouses.

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

**COMMITTEE SUBSTITUTE**  
**HOUSE JOINT RESOLUTION 16 ON THIRD READING**

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHJR 16** be placed on its third reading and final passage.

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

The resolution was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 28 ON SECOND READING**

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 28** at this time on its second reading:

**HB 28**, Relating to rehabilitation programs for defendants housed in state jail felony facilities.

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

**HOUSE BILL 28 ON THIRD READING**

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 28** 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  
HOUSE BILL 111 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 111** at this time on its second reading:

**CSHB 111**, Relating to responsibility for payment for transport by ambulance of a recipient of medical assistance in certain circumstances.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 111 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 111** be placed on its third reading and final passage.

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

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

Nays: Janek, Williams.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 867 ON SECOND READING**

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 867** at this time on its second reading:

**CSHB 867**, Relating to minimum standards applicable to certain facilities.

The bill was read second time.

Senator Deuell offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 867** by striking Article 2 of the bill (page 1, line 56 through page 2, line 15, Senate committee printing) and renumbering the subsequent article accordingly.

The floor amendment was read and was adopted without objection.

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

**CSHB 867** as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 867 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 **CSHB 867** 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.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER  
Austin, Texas  
May 27, 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 264**, Designating the Texas Music Museum the official music museum of the State of Texas.

**SCR 57**, Extending sincere condolences to the bereaved family of Stanley Allen Wiley.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1218 ON SECOND READING**

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1218** at this time on its second reading:

**CSHB 1218**, Relating to the continuation and functions of the Texas State Board of Public Accountancy; providing penalties.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1218 ON THIRD READING**

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1218** 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 2261 ON SECOND READING**

On motion of Senator Bivins and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2261** at this time on its second reading:

**CSHB 2261**, Relating to the Eighth, Ninth, and Eleventh courts of appeals districts.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2261 ON THIRD READING**

Senator Bivins moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2261** be placed on its third reading and final passage.

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

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

**RECORD OF VOTE**

Senator Fraser asked to be recorded as voting "Nay" on the final passage of **CSHB 2261**.

**HOUSE JOINT RESOLUTION 21 ON SECOND READING**

On motion of Senator Van de Putte and by unanimous consent, the regular order of business was suspended to take up for consideration **HJR 21** at this time on its second reading:

**HJR 21**, Proposing a constitutional amendment to prohibit an increase in the total amount of school district ad valorem taxes that may be imposed on the residence homestead of a disabled person.

The resolution was read second time.

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

**Floor Amendment No. 1**

Amend **HJR 21** in SECTION 3 of the joint resolution (Senate committee printing, page 1, line 53), by striking "November 4" and inserting "September 13."

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



**RECORD OF VOTE**

Senator Wentworth asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 1.

On motion of Senator Van de Putte and by unanimous consent, the caption was amended to conform to the body of the resolution as amended.

**HJR 21** as amended was passed to third reading by a viva voce vote.

**HOUSE JOINT RESOLUTION 21 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HJR 21** be placed on its third reading and final passage.

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

The resolution was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 217 ON SECOND READING**

On motion of Senator Van de Putte and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 217** at this time on its second reading:

**HB 217**, Relating to limiting the amount of school district ad valorem taxes that may be imposed on the residence homestead of a disabled person.

The bill was read second time.

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

**Floor Amendment No. 1**

Amend **HB 217** as follows:

(1) In SECTION 2 of the bill, in added Subsection (m), Section 11.26, Tax Code (committee printing, on page 2, line 48), strike "an individual" and substitute "a disabled individual".

(2) In SECTION 2 of the bill, in added Subsection (m), Section 11.26, Tax Code (committee printing, on page 2, line 49), strike "the individual" and substitute "the disabled individual".

(3) Add the following appropriately numbered SECTIONS to the bill:

SECTION \_\_\_\_\_. Section 11.42(c), Tax Code, is amended to read as follows:

(c) An exemption authorized by Section 11.13(c) or (d) [~~for an individual 65 years of age or older~~] is effective as of January 1 of the tax year in which the person qualifies for the exemption and applies to the entire tax year.

SECTION \_\_\_\_\_. Section 11.43(k), Tax Code, is amended to read as follows:

(k) A person who qualifies for an [~~the~~] exemption authorized by Section 11.13(c) or (d) [~~for an individual 65 years of age or older~~] must apply for the exemption no later than the first anniversary of the date the person qualified for the exemption.

SECTION \_\_\_\_\_. Section 26.10(b), Tax Code, is amended to read as follows:

(b) If the appraisal roll shows that a residence homestead exemption for an individual 65 years of age or older or a residence homestead exemption for a disabled individual applicable to a property on January 1 of a year terminated during the year and if the owner qualifies a different property for one of those [a] residence homestead exemptions ~~[exemption]~~ during the same year, the tax due against the former residence homestead is calculated by:

(1) subtracting:

(A) the amount of the taxes that otherwise would be imposed on the former residence homestead for the entire year had the individual qualified for the residence homestead exemption for the entire year; from

(B) the amount of the taxes that otherwise would be imposed on the former residence homestead for the entire year had the individual not qualified for the residence homestead exemption during the year;

(2) multiplying the remainder determined under Subdivision (1) by a fraction, the denominator of which is 365 and the numerator of which is the number of days that elapsed after the date the exemption terminated; and

(3) adding the product determined under Subdivision (2) and the amount described by Subdivision (1)(A).

SECTION \_\_\_\_\_. Section 26.112, Tax Code, is amended to read as follows:

Sec. 26.112. CALCULATION OF TAXES ON RESIDENCE HOMESTEAD OF ELDERLY OR DISABLED PERSON. (a) Except as provided by Section 26.10(b), if at any time during a tax year property is owned by an individual who qualifies for an exemption under Section 11.13(c) or (d) ~~[for an individual 65 years of age or older]~~, the amount of the tax due on the property for the tax year is calculated as if the person qualified for the exemption on January 1 and continued to qualify for the exemption for the remainder of the tax year.

(b) If a person qualifies for an exemption under Section 11.13(c) or (d) ~~[for an individual 65 years of age or older]~~ with respect to the property after the amount of the tax due on the property is calculated and the effect of the qualification is to reduce the amount of the tax due on the property, the assessor for each taxing unit shall recalculate the amount of the tax due on the property and correct the tax roll. If the tax bill has been mailed and the tax on the property has not been paid, the assessor shall mail a corrected tax bill to the person in whose name the property is listed on the tax roll or to the person's authorized agent. If the tax on the property has been paid, the tax collector for the taxing unit shall refund to the person who paid the tax the amount by which the payment exceeded the tax due.

(4) Strike SECTION 4 of the bill (committee printing page 3, line 64 through page 4, line 2) and substitute the following appropriately numbered SECTION:

SECTION \_\_\_\_\_. (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 2004, and applies only to an ad valorem tax year that begins on or after that date.

(b) The changes in law to Section 11.26, Tax Code, and to Section 403.302, Government Code, made by this Act take effect only if the constitutional amendment proposed by the 78th Legislature, Regular Session, 2003, to prohibit an increase in the total amount of school district ad valorem taxes that may be imposed on the residence

homestead of a disabled person is approved by the voters. If that amendment is not approved by the voters, the changes in law to those sections made by this Act have no effect.

(5) Renumber the existing SECTIONS of the bill accordingly.

The floor amendment was read and was adopted without objection.

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

**HB 217** as amended was passed to third reading by a viva voce vote.

### **HOUSE BILL 217 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 217** 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 2458 ON SECOND READING**

On motion of Senator Bivins and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2458** at this time on its second reading:

**CSHB 2458**, Relating to the collection of the motor fuel taxes; providing penalties.

The bill was read second time.

Senator Bivins offered the following amendment to the bill:

#### **Floor Amendment No. 1**

Amend **CSHB 2458** (Senate committee printing) as follows:

(1) In Section 162.125(c)(1), Tax Code, as added by SECTION 1 of the bill (page 26, line 22), strike "provided that a refund" and substitute "provided that a credit or refund".

(2) In Section 162.125(c)(5), Tax Code, as added by SECTION 1 of the bill (page 26, line 38), strike "provided that a refund" and substitute "provided that a credit or refund".

(3) In Section 162.227(c)(1), Tax Code, as added by SECTION 1 of the bill (page 43, line 38), strike "provided that a refund" and substitute "provided that a credit or refund".

(4) In Section 162.227(i), Tax Code, as added by SECTION 1 of the bill (page 44, line 13), strike "provided that a refund" and substitute "provided that a credit or refund".

The floor amendment was read and was adopted without objection.

Senator Lindsay offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 2458** in SUBCHAPTER F, Sec. 162.501, Tax Code (page 54, line 54-55, committee printing) by inserting a new subsection (c) to read as follows:

(c) In October of each even-numbered year, the comptroller, will report to the legislature on the use of the special fund in the administration and enforcement of this chapter. The report shall be reviewed by the State Auditor and the Legislative Budget Board. The report shall include:

1) the total amount expended from the special fund for administration and enforcement of motor fuels taxes;

2) any other uses of the special fund;

3) the amount of the unexpended portion reverted to other funds as provided by this chapter;

4) the methods used by the comptroller to enforce this chapter, including number of internal auditors, external auditors, and other full time employees, and;

5) recommendations for improving and enhancing the collection of motor fuels taxes in this state.

The floor amendment was read and was adopted without objection.

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

**CSHB 2458** as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2458 ON THIRD READING**

Senator Bivins moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2458** 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.

**MOTION TO PLACE  
COMMITTEE SUBSTITUTE  
HOUSE BILL 1204 ON SECOND READING**

Senator Wentworth moved to suspend the regular order of business to take up for consideration **CSHB 1204** at this time on its second reading:

**CSHB 1204**, Relating to the authority of municipalities and counties to regulate subdivisions and certain development in a municipality's extraterritorial jurisdiction.

The motion was lost by the following vote: Yeas 10, Nays 19.

Yeas: Armbrister, Averitt, Barrientos, Brimer, Carona, Madla, Shapleigh, Van de Putte, Wentworth, Zaffirini.

Nays: Bivins, Deuell, Ellis, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Nelson, Ogden, Shapiro, Staples, West, Whitmire, Williams.

Absent: Duncan, Ratliff.

### **HOUSE BILL 3208 ON SECOND READING**

On motion of Senator Averitt and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3208** at this time on its second reading:

**HB 3208**, Relating to the temporary provision of lump-sum payments to certain retiring members of the Employees Retirement System of Texas.

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

### **HOUSE BILL 3208 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 3208** be placed on its third reading and final passage.

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

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

### **HOUSE BILL 1125 ON SECOND READING**

On motion of Senator Staples and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1125** at this time on its second reading:

**HB 1125**, Relating to the period for the redemption of a mineral interest sold for unpaid ad valorem taxes at a tax sale.

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

### **HOUSE BILL 1125 ON THIRD READING**

Senator Staples moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1125** 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 1296 ON THIRD READING

The Presiding Officer, Senator Armbrister in Chair, laid before the Senate **HB 1296** on its third reading. The Constitutional Three-day Rule had been suspended and further consideration postponed:

**HB 1296**, Relating to small business development programs of navigation districts and port authorities.

Question — Shall **HB 1296** be read third time?

**HB 1296** was read third time.

Senator Lucio offered the following amendment to the bill:

#### Floor Amendment No. 1 on Third Reading

Amend **HB 1296** by inserting the following new SECTIONS to read as follows and renumbering the subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. The heading to Chapter 55, Transportation Code, is amended to read as follows:

CHAPTER 55. FUNDING OF PORT SECURITY, PROJECTS,  
AND STUDIES [TEXAS PORT TRANSPORTATION AND  
ECONOMIC DEVELOPMENT FUNDING]

SECTION \_\_\_\_\_. Section 55.001, Transportation Code, is amended to read as follows:

Sec. 55.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Texas Transportation Commission.
- (2) "Committee" means the [~~Texas~~] Port Authority [~~Transportation and Economic Development~~] Advisory Committee.
- (3) [~~2~~] "Department" means the Texas Department of Transportation [~~Economic Development~~].
- (4) [~~3~~] "Fund" means the port access account fund.
- (5) [~~4~~] "Port security, transportation, or facility project" means a project that is necessary or convenient for the proper operation of a port and that will improve the security, movement, and intermodal transportation of cargo or passengers in commerce and trade.

SECTION \_\_\_\_\_. Section 55.002, Transportation Code, is amended to read as follows:

Sec. 55.002. [~~TEXAS~~] PORT [~~TRANSPORTATION AND ECONOMIC~~] DEVELOPMENT FUNDING. (a) From [~~Using only~~] money in the fund, the department shall fund:

- (1) port security, transportation, or facility projects; and [~~or~~]
  - (2) port studies.
- (b) The department may not fund a port security, transportation, or facility project unless an amount at least equal to the amount provided by the department is invested in the [~~a~~] project by a port authority or navigation district.
- (c) Port security, transportation, or facility projects eligible for funding under this chapter include:

- (1) construction or improvement of transportation facilities within the jurisdiction of a port;

(2) the dredging or deepening of channels, turning basins, or harbors;  
 (3) the construction or improvement of wharves, docks, structures, jetties, piers, storage facilities, cruise terminals, or any facilities necessary or useful in connection with port transportation or economic development;

(4) the construction or improvement of facilities necessary or useful in providing port security;

(5) the acquisition of container cranes or other mechanized equipment used in the movement of cargo or passengers in international commerce;

(6) [(5)] the acquisition of land to be used for port purposes;

(7) [(6)] the acquisition, improvement, enlargement, or extension of existing port facilities; and

(8) [(7)] environmental protection projects that:

(A) are required as a condition of a state, federal, or local environmental permit or other form of ~~[state]~~ approval;

(B) are necessary for the acquisition of spoil disposal sites and improvements to existing and future spoil sites; or

(C) ~~[that]~~ result from the undertaking of eligible projects.

(d) The department, in consultation with the committee, shall review the list of projects recommended by the committee to evaluate the economic benefit of each project. The commission [department], after receiving recommendations from [it ~~consultation with]~~ the committee and from the department, shall approve projects or studies for funding based on its review.

SECTION \_\_\_\_\_. Section 55.004, Transportation Code, is amended to read as follows:

Sec. 55.004. AUDIT. The department may subject a project that receives money under this chapter to a final audit. ~~[The department may adopt rules and perform other acts necessary or convenient to ensure that the final audits are conducted and that any deficiency or questioned costs noted by the audit are resolved.]~~

SECTION \_\_\_\_\_. Section 55.006, Transportation Code, is amended to read as follows:

Sec. 55.006. ~~[TEXAS] PORT AUTHORITY [TRANSPORTATION AND ECONOMIC DEVELOPMENT] ADVISORY COMMITTEE.~~ (a) The committee [Texas Port Transportation and Economic Development Advisory Committee] consists of seven members appointed by the commission. The members shall be appointed as follows:

(1) one member from the Port of Houston Authority [a member of the governing body of each of the ports that are members of the Texas Ports Association or their designees]; [and]

(2) three members who represent ports on the upper Texas coast; and [as a nonvoting member, the executive director or the designee of the department]

(3) three members who represent ports on the lower Texas coast.

(b) A committee member serves at the pleasure of the commission [The committee shall develop bylaws under which it operates. The bylaws must specify the procedure by which the presiding officer of the committee is elected. A majority of voting members constitutes a quorum sufficient to conduct meetings and business of

~~the committee. A vote of the majority of the voting members present is sufficient for any action of the committee, unless the bylaws of the committee require a greater vote for a particular action].~~

(c) ~~[The committee shall meet at the call of its presiding officer, at the request of a majority of its membership, or at times prescribed in its bylaws.]~~ The committee must meet at least semiannually.

(d) A member is not entitled to compensation for service on the committee but is entitled to reimbursement for reasonable expenses the member incurs in performing committee duties.

(e) Section ~~[Sections]~~ 2110.002 ~~[and 2110.008]~~, Government Code, does ~~[do]~~ not apply to the committee.

SECTION \_\_\_\_\_. Section 55.007, Transportation Code, is amended to read as follows:

Sec. 55.007. DUTIES OF COMMITTEE. The committee shall:

- (1) prepare a port mission plan;
- (2) review each project eligible to be funded under this chapter and make recommendations for approval or disapproval to the department;
- (3) maintain trade data information that will assist ports in this state and international trade;

(4) annually prepare a list of projects that have been recommended by the committee, including:

(A) the recommended funding level for each project; and

(B) if staged implementation of the project is appropriate, the funding requirements for each stage; and

(5) advise the commission and the department on matters relating to port authorities and, ~~[adopt rules for evaluating projects that may be funded under this chapter, providing criteria for the evaluation of the economic benefit of the project, measured by the potential for the proposed project to increase:~~

~~[(A) cargo flow;~~

~~[(B) cruise passenger movement;~~

~~[(C) international commerce;~~

~~[(D) port revenues; and~~

~~[(E) the number of jobs for the port's local community].~~

(6) advise on promoting small business programs adopted by port commissions or authorities.

SECTION \_\_\_\_\_. Section 55.008, Transportation Code, is amended to read as follows:

Sec. 55.008. CAPITAL PROGRAM. (a) The committee shall prepare a two-year port capital program defining the goals and objectives of the committee concerning the development of port facilities and an intermodal transportation system. The port capital program must include projects or studies submitted to the committee by any [each] port ~~[that is a member of the committee]~~ and recommendations for:

(1) the construction of transportation facilities connecting any port to another transportation mode; and

(2) the efficient, cost-effective development of transportation facilities or port facilities for the purpose of:



- (A) enhancing international trade;
- (B) enhancing security;
- (C) promoting cargo flow;
- (D) [~~(C)~~] increasing cruise passenger movements;
- (E) [~~(D)~~] increasing port revenues; and
- (F) [~~(E)~~] providing economic benefits to the state.

(b) The committee shall update the port capital program annually and shall submit the capital program not later than February 1 of each year to:

- (1) the governor;
- (2) the lieutenant governor;
- (3) the speaker of the house of representatives; and
- (4) the commission [~~department~~].

SECTION \_\_\_\_\_. Chapter 55, Transportation Code, is amended by adding Section 55.009 to read as follows:

Sec. 55.009. RULES. The commission shall adopt rules to implement this chapter.

SECTION \_\_\_\_\_. Chapter 53, Transportation Code, is repealed.

The floor amendment was read and was adopted without objection.

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

**HB 1296** as amended was finally passed by the following vote: Yeas 31, Nays 0.

### **HOUSE BILL 2081 ON SECOND READING**

On motion of Senator Ratliff and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2081** at this time on its second reading:

**HB 2081**, Relating to an exemption from The Texas Engineering Practice Act for certain public works.

The bill was read second time.

Senator Ratliff offered the following amendment to the bill:

#### **Floor Amendment No. 1**

Amend **HB 2081** by adding a new SECTION 2 on page 1, line 23 to read as follows and renumbering subsequent sections:

"SECTION 2. In the event of a conflict between a provision of this Act and another Act passed by the 78th Legislature, Regular Session, 2003, that becomes law, this Act prevails and controls regardless of the relative dates of enactment."

The floor amendment was read and was adopted without objection.

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

**HB 2081** as amended was passed to third reading by a viva voce vote.

**HOUSE BILL 2081 ON THIRD READING**

Senator Ratliff moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2081** be placed on its third reading and final passage.

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

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 264 ON SECOND READING**

On motion of Senator Hinojosa and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 264** at this time on its second reading:

**HB 264**, Relating to supplemental contributions to the optional retirement program by institutions of higher education.

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

**HOUSE BILL 264 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 264** be placed on its third reading and final passage.

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

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 826 ON SECOND READING**

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 826** at this time on its second reading:

**HB 826**, Relating to the disposition of certain unclaimed wage payments.

The bill was read second time.

Senator Carona offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 826** (Senate committee printing) as follows:

(1) In SECTION 1 of the bill, in proposed Section 61.103, Labor Code (page 1, line 47), strike "An" and substitute "(a) Except as provided by Subsection (b), an".

(2) In SECTION 1 of the bill, in proposed Section 61.103, Labor Code (page 1, between lines 51 and 52), insert the following:

(b) An employer or former employer who holds an unclaimed wage payment of \$100 or less that is presumed to be abandoned under this subchapter is not required to dispose of the unclaimed wage payment in the manner prescribed by Chapter 74, Property Code, until the payment has been abandoned for three years after the date from which the period applicable under Section 61.101 or 61.102 is measured.

(3) Between SECTIONS 3 and 4 of the bill (page 2, between lines 6 and 7), insert the following appropriately numbered SECTION and renumber subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 74.301(a), Property Code, is amended to read as follows:

(a) Except as provided by Subsection (c), each holder who on June 30 holds property that is presumed abandoned under Chapter 72, 73, or 75 of this code or Subchapter G, Chapter 61, Labor Code, shall deliver the property to the comptroller on or before the following November 1 accompanied by the report required to be filed under Section 74.101.

The floor amendment was read and was adopted without objection.

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

**HB 826** as amended was passed to third reading by a viva voce vote.

#### **HOUSE BILL 826 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 826** 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 2593 ON SECOND READING**

On motion of Senator Estes and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2593** at this time on its second reading:

**HB 2593**, Relating to winery permits.

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

#### **HOUSE BILL 2593 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2593** 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.

Senator Estes offered the following amendment to the bill:

**Floor Amendment No. 1 on Third Reading**

Amend **HB 2593** as follows:

(1) In Section 2 of the bill, in added Section 16.011, Alcoholic Beverage Code (Senate committee printing, page 1, line 38), strike "A winery permit may be issued for premises in a dry area. A holder of a permit under this section" and substitute "(a) Except as provided by Subsection (b), the holder of a winery permit whose premises is located in a dry area".

(2) In Section 2 of the bill, in added Section 16.011(a), Alcoholic Beverage Code (Senate committee printing, page 1, line 41), between "wine" and the semicolon insert "and bottle, label, and package wine manufactured on the premises".

(3) In Section 2 of the bill, at the end of added Section 16.011, Alcoholic Beverage Code (Senate committee printing, page 1, between lines 52 and 53), insert the following:

(b) The holder of a winery permit whose premises is located in a dry area may engage in any activity authorized under Section 16.01 if, at any time when the holder held the license, the premises was located in a wet area.

(4) Add the following appropriately numbered SECTIONS to the bill and renumber the subsequent SECTIONS of the bill as appropriate:

SECTION \_\_\_\_\_. Chapter 16, Alcoholic Beverage Code, is amended by adding Section 16.09 to read as follows:

Sec. 16.09. LOCATION OF CERTAIN PREMISES. The commission or administrator may not suspend or cancel an original or renewal winery permit or refuse to renew a winery permit on the basis that the permitted premises is located in a dry area if the permit was issued:

(1) before June 1, 2003; or

(2) when the area in which the premises is located was a wet area.

SECTION \_\_\_\_\_. Chapter 18, Alcoholic Beverage Code, is amended by adding Section 18.04 to read as follows:

Sec. 18.04. LOCATION OF CERTAIN PREMISES. The commission or administrator may not suspend or cancel an original or renewal wine bottler's permit or refuse to renew a wine bottler's permit on the basis that the permitted premises is located in a dry area if:

(1) the original permit was issued before June 1, 2003; and

(2) the permit holder also holds a winery permit.

SECTION \_\_\_\_\_. Not later than October 1, 2003, the Texas Alcoholic Beverage Commission shall reissue a wine bottler's permit to the holder of the wine bottler's permit that also holds a winery permit that was canceled before the effective date of this Act on the basis that the permitted premises was located in a dry area.

The floor amendment was read and was adopted without objection.

Senator Estes offered the following amendment to the bill:

**Floor Amendment No. 2 on Third Reading**

Amend **HB 2593** in Section 1 of the bill, in amended Section 16.01(a)(3), Alcoholic Beverage Code (Senate committee printing, page 1, lines 17-19), by striking "permit holders authorized to purchase and sell wine [holders of wholesaler's permits, winery permits, and wine bottler's permits]" and substituting "or buy wine from permit holders authorized to purchase and sell wine, including holders of wholesaler's permits, winery permits, and wine bottler's permits".

The floor amendment was read and was adopted without objection.

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

**HB 2593** as amended was finally passed by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1931 ON SECOND READING**

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1931** at this time on its second reading:

**CSHB 1931**, Relating to pipeline safety emergency response plans and the requirements governing notification of pipeline construction and operation.

The bill was read second time.

Senator Hinojosa offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1931** (Senate committee printing) as follows:

(1) In Subsection (a) of Section 2 of the bill, in proposed Section 756.102, Health and Safety Code (page 2, line 45), between "APPLICABILITY." and "This", insert "(a)".

(2) In Subsection (a) of Section 2 of the bill, between proposed Sections 756.102 and 756.103, Health and Safety Code (page 2, between lines 51 and 52), insert:

(b) This subchapter does not apply to:

(1) construction done by a municipality on property owned by the municipality, unless the construction is for private commercial use; or

(2) construction or repair, replacement, or maintenance of construction on property owned by a navigation district or port authority created or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(3) After Subsection (b) of Section 2 of the bill (page 3, between lines 7 and 8), insert:

(c) Section 756.102(b), Health and Safety Code, as added by this section, does not affect litigation that is pending on the effective date of this section and does not affect the rights or obligations of a municipality, navigation district, or port authority otherwise provided by law.

The floor amendment was read and was adopted without objection.

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

**CSHB 1931** as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1931 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 **CSHB 1931** be placed on its third reading and final passage.

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

Nays: Barrientos.

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

**BILLS AND RESOLUTIONS SIGNED**

The Presiding Officer, Senator Armbrister in Chair, announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

**SB 196, SB 273, SB 370, SB 407, SB 501, SB 514, SB 521, SB 566, SB 608, SB 691, SB 745, SB 774, SB 854, SB 917, SB 919, SB 1070, SB 1072, SB 1136, SB 1147, SB 1251, SB 1317, SB 1429, SB 1445, SB 1457, SB 1526, SB 1527, SB 1572, SB 1606, SB 1647, SB 1663, SB 1669, SB 1694, SB 1884, SB 1892, SCR 21, HB 21, HB 529, HB 725, HB 864, HB 917, HB 1446, HB 1459, HB 1619, HB 1699, HB 1723, HB 2130, HB 2169, HB 2295, HB 2470, HB 3152, HB 3242, HCR 9, HJR 23, HJR 59.**

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1541 ON SECOND READING**

On motion of Senator Lindsay and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1541** at this time on its second reading:

**CSHB 1541**, Relating to the general powers and authority of water districts.

The bill was read second time.

Senator Lindsay offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1541** (Senate committee printing) as follows:

(1) In SECTION 3 of the bill (page 1, lines 32 and 33), strike the introductory language and substitute: "Section 43.0751, Local Government Code, is amended by amending Subsections (d), (f), and (i) and adding Subsection (q) to read as follows:".

(2) In SECTION 3 of the bill, in amended Subsection (f)(1), Section 43.0751, Local Government Code (page 1, line 61), strike ":",

(3) In SECTION 3 of the bill, in amended Subsection (f)(1), Section 43.0751, Local Government Code (page 1, line 62), strike "(A)".

(4) In SECTION 3 of the bill, in amended Subsection (f)(1), Section 43.0751, Local Government Code (page 1, line 63), strike "and".

(5) In SECTION 3 of the bill, in amended Subsection (f)(1), Section 43.0751, Local Government Code (page 2, lines 1-2), strike Subsection (f)(1)(B).

(6) In SECTION 3 of the bill, in amended Subsection (f)(2)(B), Section 43.0751, Local Government Code (page 2, lines 10-19), strike lines 10 through 19 and substitute the following:

district if:

(i) the provision of services is specified and agreed to in [such amendments to the timing requirements of Sections 43.123(d)(2) and 43.127(b) as may be necessary or convenient to effectuate the purposes of] the agreement;

(ii) the provision of services is not solely the result of a regulatory plan adopted by the municipality in connection with the limited-purpose annexation of the district; and

(iii) the district has obtained the authorization of the governmental entity currently providing the service;

(7) In SECTION 3 of the bill, following amended Subsection (i), Section 43.0751, Local Government Code (page 3, between lines 20 and 21), insert the following:

(q) Subchapter F does not apply to a limited-purpose annexation under a strategic partnership agreement.

(8) In SECTION 57 of the bill (page 15, lines 50-54), strike Subsection (a) and substitute the following:

(a) Except as provided by this section, a provision of a strategic partnership agreement entered into before December 31, 2003, that does not comply with Section 43.0751(f)(2), Local Government Code, as amended by this Act, is not enforceable after December 31, 2003, to the extent of the noncompliance.

(b) A permit issued before December 31, 2003, by a municipality with a population of 1.9 million or more remains valid until its expiration and shall be recognized by the county.

(c) A municipality with a population of 1.9 million or more may not enforce, under a strategic partnership agreement, a code provision that would otherwise require a building permit from the municipality after the effective date of this Act.

(d) This section does not affect the validity or enforceability of a provision of a strategic partnership agreement that requires services or imposes fees if the services or fees relate to emergency services that were specifically requested by the board of a municipal utility district or if the services or fees have been approved by a state agency or a political subdivision that is not a party to the strategic partnership agreement.

(9) In SECTION 57 of the bill (page 15, line 55), strike "(b)" and substitute "SECTION 58. (a)".

(10) In SECTION 57 of the bill (page 15, line 60), strike "(c)" and substitute "(b)".

(11) In SECTION 57 of the bill (page 15, line 65), strike "(d)" and substitute "(c)".

(12) Renumber subsequent SECTIONS accordingly.

The floor amendment was read and was adopted without objection.

Senator Lindsay offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 1541** (Senate committee printing) as follows:

(1) In SECTION 57 of the bill (page 15, lines 60-64), strike Subsection (c).

(2) In SECTION 57 of the bill (page 15, line 65), strike "(d)" and substitute "(c)".

The floor amendment was read and was adopted without objection.

Senator Lindsay offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **CSHB 1541** (Senate committee printing) in SECTION 27 of the bill, at the end of proposed Section 54.2052, Water Code (page 9, line 28), by adding "If a municipal regulation conflicts with a district regulation, the municipal regulation prevails."

The floor amendment was read and was adopted without objection.

Senator Carona offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend **CSHB 1541** by adding a new section to read as follows and renumbering the following sections as appropriate:

SECTION \_\_\_\_\_. Section 53.029, Water Code, is amended by adding Subsection 53.029(e), to read as follows:

(e) A district which has duly adopted the rights, authority, privileges and functions of a road district in the manner specified by Section 53.029(c), Water Code, as amended, may, following approval of a construction contract by the district's governing body, reimburse expenditures in the manner authorized by Sections 257.003(a) and (b), Transportation Code, without any additional approvals under Section 257.003, Transportation Code.

The floor amendment was read and was adopted without objection.

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

**Floor Amendment No. 5**

Amend **CSHB 1541** by adding a new Section 56 as follows and renumber Sections accordingly:

SECTION 56. Section 36.002, Water Code, is amended to read as follows: Sec. 36.002. OWNERSHIP OF GROUNDWATER. The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized, and nothing in this code shall be construed as depriving or divesting the owners or their lessees and assigns of the ownership or rights, except as those rights may be limited or altered by rules promulgated by a district. A rule promulgated by a district may not discriminate against owners of land or their lessees and assigns whose land is enrolled or participating in the federal conservation reserve program.



SECTION 57. Section 36.101(a), Water Code, is amended to read as follows:

(a) A district may make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter. During the rulemaking process the board shall consider all groundwater uses and needs and shall develop rules that [which] are fair and impartial and do not discriminate between land in production and land enrolled or participating in the federal conservation reserve program.

SECTION 58. Section 36.113, Water Code, is amended by adding Subsection (h) to read as follows: (h) In issuing a permit for an existing or historic use, a district may not discriminate against land or wells on land enrolled or participating in the federal conservation reserve program. If a district adopts rules related to the protection of existing or historic use, any land in a federal conservation reserve program shall be treated as having an existing and historic use.

To the existing SECTION 57, add (e) Except as provided by Subsection (c) of this section, the change in law made by this Act to Section 36.002, Section 36.101(a), and Section 36.113, Water Code, applies to all rules adopted by a groundwater conservation district before, on or after the effective date of this Act. (f) The change in law made by this Act to Section 36.002, Section 36.101(a), and Section 36.113, Water Code, does not apply to rules adopted by the Edwards Aquifer Authority.

The floor amendment was read and was adopted without objection.

### VOTE RECONSIDERED

On motion of Senator Lindsay and by unanimous consent, the vote by which Floor Amendment No. 5 was adopted was reconsidered.

Question — Shall Floor Amendment No. 5 to **CSHB 1541** be adopted?

Floor Amendment No. 5 was again adopted by the following vote: Yeas 19, Nays 8.

Yeas: Armbrister, Averitt, Bivins, Brimer, Carona, Estes, Fraser, Gallegos, Harris, Jackson, Janek, Lindsay, Lucio, Madla, Ogden, Ratliff, Shapiro, Van de Putte, Zaffirini.

Nays: Barrientos, Deuell, Ellis, Nelson, Shapleigh, Wentworth, West, Williams.

Absent: Duncan, Hinojosa, Staples, Whitmire.

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

**CSHB 1541** as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1541 ON THIRD READING**

Senator Lindsay moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1541** be placed on its third reading and final passage.

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

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 3139 ON SECOND READING**

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3139** at this time on its second reading:

**HB 3139**, Relating to delivery sales of cigarettes; providing penalties.

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

**HOUSE BILL 3139 ON THIRD READING**

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3139** 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 1887 ON SECOND READING**

On motion of Senator Ratliff and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1887** at this time on its second reading:

**HB 1887**, Relating to funds received by institutions of higher education to cover overhead expenses of conducting research.

The bill was read second time.

Senator Ratliff offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1887** by adding the following new SECTION 3 to the bill:

SECTION 3. Notwithstanding Section 2 of this Act, this Act takes effect only if H.B. 3015 or similar legislation providing for deregulation of tuition charged by institutions of higher education to resident undergraduate students is enacted.

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

**RECORD OF VOTE**

Senator Barrientos asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 1.

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

**HB 1887** as amended was passed to third reading by a viva voce vote.

#### **HOUSE BILL 1887 ON THIRD READING**

Senator Ratliff moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1887** be placed on its third reading and final passage.

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

Nays: Staples.

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

#### **COMMITTEE SUBSTITUTE HOUSE BILL 1457 ON SECOND READING**

On motion of Senator Janek and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1457** at this time on its second reading:

**CSHB 1457**, Relating to the applicability and enforcement of the law governing access to public beaches.

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

#### **COMMITTEE SUBSTITUTE HOUSE BILL 1457 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 1457** be placed on its third reading and final passage.

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

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### **HOUSE JOINT RESOLUTION 51 ON SECOND READING**

On motion of Senator Staples and by unanimous consent, the regular order of business was suspended to take up for consideration **HJR 51** at this time on its second reading:

**HJR 51**, Proposing a constitutional amendment to establish a two-year period for the redemption of a mineral interest sold for unpaid ad valorem taxes at a tax sale.

The resolution was read second time.

Senator Staples offered the following amendment to the resolution:

#### **Floor Amendment No. 1**

Amend **HJR 51** (Senate committee printing) page 1, lines 51-56 by striking Section 3 and insert in its place the following:

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment to establish a two-year period for the redemption of a mineral interest sold for unpaid ad valorem taxes at a tax sale."

The floor amendment was read and was adopted without objection.

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

**HJR 51** as amended was passed to third reading by a viva voce vote.

#### **HOUSE JOINT RESOLUTION 51 ON THIRD READING**

Senator Staples moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HJR 51** be placed on its third reading and final passage.

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

The resolution was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### **HOUSE BILL 1499 ON SECOND READING**

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1499** at this time on its second reading:

**HB 1499**, Relating to the view of the state capitol.

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

#### **HOUSE BILL 1499 ON THIRD READING**

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1499** 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 Brimer in Chair)**

#### **COMMITTEE SUBSTITUTE HOUSE BILL 2877 ON SECOND READING**

Senator Armbrister moved to suspend the regular order of business to take up for consideration **CSHB 2877** at this time on its second reading:

**CSHB 2877**, Relating to certain permitting procedures of the Texas Commission on Environmental Quality.

The motion prevailed by a viva voce vote.

**RECORD OF VOTES**

Senators Barrientos and Shapleigh asked to be recorded as voting "Nay" on the suspension of the regular order of business.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2877** by adding four appropriately numbered sections as follows, and renumbering all other sections accordingly:

AMENDMENT SECTION 1. Section 382.056(r), Health and Safety Code, is amended as follows:

(r) This section does not apply to:

(1) the relocation or change of location of a portable facility to a site where a portable facility ~~[permitted by the commission is located if no portable facility]~~ has been located at the proposed site at any time during the previous two years; ~~[or]~~

(2) a facility located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project; or

(3) a facility described by Section 382.065(c), unless that facility is in a county with a population of 2.4 million or more or in a county adjacent to such a county.

AMENDMENT SECTION 2. Section 382.056, Health and Safety Code, as added by Chapter 965, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Section 382.065. CERTAIN LOCATIONS FOR OPERATING CONCRETE CRUSHING FACILITY PROHIBITED. (a) The commission by rule shall prohibit the ~~[location of or]~~ operation of a concrete crushing facility at a location within 440 yards of a building in use [used] as a single or multifamily residence, school, or place of worship at the time the application for a permit to operate the facility at a site near the residence, school, or place of worship is filed with the commission. The measurement of distance for purposes of this subsection shall be taken from the point on the concrete crushing facility that is nearest to the residence, school, or place of worship toward the point on the residence, school, or place of worship that is nearest the concrete crushing facility.

(b) Subsection (a) [This section] does not apply to a [an existing] concrete crushing facility:

(1) at a location for which commission authorization for the operation of a concrete crushing facility was in effect on September 1, 2001; or

(2) at a location that satisfies the distance requirements of Subsection (a) at the time the application for the initial authorization for the operation of that facility at that location is filed with the commission, provided that the authorization is granted and maintained, regardless of whether a single or multifamily residence, school, or place of worship is subsequently built or put to use within 440 yards of the facility.

(c) Except as provided by Subsection (d), Subsection (a) does not apply to a concrete crushing facility that:

(1) is engaged in crushing concrete and other materials produced by the demolition of a structure at the location of the structure and the concrete and other materials are being crushed primarily for use at that location;

(2) operates at that location for not more than 180 days;

(3) the commission determines will cause no adverse environmental or health effects by operating at that location; and

(4) complies with conditions stated in commission rules, including operating conditions.

(d) Notwithstanding Subsection (c), Subsection (a) applies to a concrete crushing facility in a county with a population of 2.4 million or more or in a county adjacent to such a county.

AMENDMENT SECTION 3. The Texas Commission on Environmental Quality shall adopt rules to implement Section 382.065, Health and Safety Code, as amended by this Act, as soon as practicable and not later than January 1, 2004.

AMENDMENT SECTION 4. A change in law made by this Act the effect of which is to restrict the location or operation of a concrete crushing facility does not apply to a facility for which an application for authorization to operate at a particular location is filed before the effective date of this Act.

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. 1.

Senator Armbrister offered the following amendment to the bill:

#### Floor Amendment No. 2

Amend **CSHB 2877** by adding a new SECTION 6 to read as follows and renumbering the following SECTIONS appropriately:

SECTION 6. Section 7.141, Water Code, is amended by adding Subdivision (2-a) to read as follows:

(2-a) "Dispose of" means to discharge, deposit, inject, dump, spill, leak, or place solid waste, hazardous waste, medical waste, used oil, low-level radioactive waste, or a lead-acid battery, whether containerized or uncontainerized, into or on land or water so that the solid waste, hazardous waste, medical waste, used oil, low-level radioactive waste, lead-acid battery, or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner. The term does not include passive migration, continuous release, seepage, or other movement that occurs:

(A) after the substance is initially disposed of; and

(B) without human initiation or assistance.

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. 3

Amend **HB 2877** as follows:

(1) Insert a new SECTION of the bill to read as follows:

SECTION \_\_\_\_\_. Section 36.101, Water Code, is amended by adding Subsection (d) to read as follows:

(d) The commission has principal and exclusive authority as to the control, regulation, or abatement of nonpoint source pollution of water or other regulation of water quality in terms of limiting a landowner's ability to develop or use that land in the jurisdiction of any water district or authority with management and regulatory authority over groundwater withdrawals.

(2) Insert a new SECTION of the bill to read as follows:

SECTION \_\_\_\_\_. This section supersedes any other provision of this Act to the extent of any conflict. Section 36.101(d), Water Code, as added by this Act, supersedes any other applicable law or action taken under that law to the extent of any conflict. Any rule or order of an applicable district or authority purporting to regulate water quality as described by the change in law made by this Act to Section 36.101, Water Code, may not be enforced regardless of whether the adoption date of the rule or order is before, on, or after the effective date of this Act.

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

### RECORD OF VOTES

Senators Shapleigh, Van de Putte, and Wentworth asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 3.

Senator Lucio offered the following amendment to the bill:

#### Floor Amendment No. 4

Amend **CSHB 2877** by adding a new Subsection (g) to Section 36.015, Water Code, to read as follows:

(g) Notwithstanding other law and any other applicable provisions of this chapter, the commission shall certify a petition filed under Section 36.013 and give notice and conduct a public meeting on the petition if the filings under Section 36.013(b) and (c) show that the district is comprised of 400,000 or more coterminous acres owned by a single landowner. Chapter 49, Water Code, does not apply to a district created under this subsection, except that Section 49.223, Water Code, shall apply to the district.

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

Senator Shapleigh offered the following amendment to the bill:

#### Floor Amendment No. 5

Amend **CSHB 2877** in SECTION 3 of the bill, in amended Section 7.0025, Water Code, by striking amended Subsections (b) and (c) (Senate committee printing page 2, lines 6-35) and substituting the following:

(b) The commission may initiate an enforcement action on a matter under its jurisdiction under this code or the Health and Safety Code based on any credible evidence, including information the commission [✱] receives from a private individual if that information, by itself or in combination with the commission's evidence, in the commission's judgment, is of sufficient value and credibility to warrant the initiation of an enforcement action.

(c) [(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) whether the individual providing the information is 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;

(2) whether any physical or sampling data submitted by an individual to prove one or more elements of an enforcement case was collected or gathered in accordance with relevant commission protocols; and

(3) whether the individual submitting the physical or sampling data is willing to submit a sworn affidavit that the relevant commission protocols were followed when collecting the data.

The floor amendment was read and failed of adoption by the following vote: Yeas 14, Nays 16.

Yeas: Armbrister, Barrientos, Ellis, Gallegos, Hinojosa, Lindsay, Lucio, Ratliff, Shapleigh, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Averitt, Bivins, Brimer, Carona, Deuell, Duncan, Estes, Fraser, Harris, Jackson, Janek, Nelson, Ogden, Shapiro, Staples, Williams.

Absent: Madla.

Senator Jackson offered the following amendment to the bill:

### **Floor Amendment No. 6**

Amend **CSHB 2877** as follows:

(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.

### POINT OF ORDER

Senator Wentworth raised a point of order that Floor Amendment No. 6 was in violation of House Rule 9.01.

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

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

### RECORD OF VOTES

Senators Lindsay, Shapiro, and Wentworth asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 6.

Senator Madla offered the following amendment to the bill:

#### Floor Amendment No. 7

Amend **CSHB 2877** as follows:

- (1) On page 1, line 22, strike "and (h)"
- (2) On page 1, line 57-61, strike subsection (h).

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

Senator Williams offered the following amendment to the bill:

#### Floor Amendment No. 8

Amend **CSHB 2877** by inserting a new appropriately numbered SECTION and renumbering subsequent sections accordingly.

SECTION \_\_\_\_\_. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; EXPEDITED LETTER FEE. Section 5.701 Texas Water Code is amended by adding subsection (r) to read as follows:

r) The fee for processing a request for an expedited letter from the executive director stating the total depth of surface casing needed during the drilling of wells to protect usable ground waters in the state and required for the processing of certain permits from the Railroad Commission of Texas is not to exceed \$75.

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

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

**CSHB 2877** as amended was passed to third reading by a viva voce vote.

**RECORD OF VOTES**

Senators Barrientos, Shapleigh, and Zaffirini asked to be recorded as voting "Nay" on the passage of **CSHB 2877** to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2877 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 **CSHB 2877** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Armbrister, Averitt, Bivins, Brimer, Carona, Deuell, Duncan, Ellis, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Ratliff, Shapiro, Staples, Van de Putte, Wentworth, West, Whitmire, Williams.

Nays: Barrientos, Shapleigh, Zaffirini.

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

**RECORD OF VOTES**

Senators Barrientos, Shapleigh, and Zaffirini asked to be recorded as voting "Nay" on the final passage of **CSHB 2877**.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1839 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1839** at this time on its second reading:

**CSHB 1839**, Relating to property in the custody of a pawnbroker; providing criminal penalties.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1839 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 **CSHB 1839** 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 2004 ON SECOND READING**

On motion of Senator Van de Putte and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2004** at this time on its second reading:

**CSHB 2004**, Relating to allowing a commissioners court to deliberate in a closed meeting regarding business and financial considerations of a contract being negotiated.

The bill was read second time.

Senator Jackson offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2004** (committee printing) as follows:

1. On page 1, line 10, by inserting "with a population of 400,000 or more" between "county" and "may"; and
2. On page 1, line 22, by adding new subsection (3) as follows:

(3) Notwithstanding Government Code Section 551.103(a), the commissioners court must make a tape recording of the proceedings of a closed meeting to deliberate the information.

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

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

**CSHB 2004** as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2004 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2004** be placed on its third reading and final passage.

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

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE JOINT RESOLUTION 85 ON SECOND READING**

On motion of Senator Estes and by unanimous consent, the regular order of business was suspended to take up for consideration **HJR 85** at this time on its second reading:

**HJR 85**, Proposing a constitutional amendment to allow wineries in this state to manufacture, sell, and dispense certain wine.

The resolution was read second time.

Senator Estes offered the following amendment to the resolution:

**Floor Amendment No. 1**

Amend **HJR 85** (Senate committee printing) by striking all below the resolving clause and substituting the following:

SECTION 1. Article XVI, Texas Constitution, is amended by adding Section 20a to read as follows:

Sec. 20a. (a) Notwithstanding any other provision of this article, a winery licensed or permitted to operate in this state by the Texas Alcoholic Beverage Commission or its successor may continue to operate in this state regardless of whether the winery is located in an area in which the possession or sale of intoxicating liquors is restricted or prohibited if:

(1) the winery was licensed or permitted on January 1, 2004; or

(2) the winery was licensed or permitted immediately before the possession or sale of intoxicating liquors became restricted or prohibited in the area in which winery is located.

(b) The Texas Alcoholic Beverage Commission or its successor may not suspend or cancel a winery's original or renewal license or permit or refuse to renew a winery's license or permit on the basis that the winery is located in a dry area.

(c) A winery located in an area in which the sale of wine has not been authorized by an election under Article XVI, Section 20(b), of this constitution, may only sell or dispense wine if the wine is manufactured in this state and at least 75 percent of its volume is derived from fermented juice of grapes or other fruit grown in this state.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: "A constitutional amendment to allow wineries to continue to operate in an area of this state where the sale of wine has not been authorized and to sell Texas wine on the wineries' premises."

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

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

**HJR 85** as amended was passed to third reading by a viva voce vote.

**HOUSE JOINT RESOLUTION 85 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HJR 85** be placed on its third reading and final passage.

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

The resolution was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2044 ON SECOND READING**

On motion of Senator Staples and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2044** at this time on its second reading:

**CSHB 2044**, Relating to the powers and duties of the General Land Office and the accounting and disposition of state-owned real property.

The bill was read second time.

Senator Ratliff offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2044** by inserting the following appropriately numbered SECTION into the bill and renumbering existing SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) On or before January 1, 2004, the School Land Board shall approve a patent to release all of the state's interest in the land described by Subsection (b) of this section, excluding mineral rights, to a person holding the land under a contract for deed with the Veterans' Land Board on January 1, 1964, or an heir or assign of that person, in exchange for consideration in an amount determined by the School Land Board in consultation with the Veterans' Land Board.

(b) This section applies to the tract of land described as follows:  
that 35.686 acre tract in that certain Judgement under cause No. 75-49, The Veterans Land Board of the State of Texas vs. Alice Christian, in the 4th Judicial District Court of Rusk County, Texas and in that certain judgement in Cause No. 55, 765, State vs. Humble Oil, et al in the 98th District Court of Travis County, Texas; Said 117.436 acre tract is also further described in that Contract of Sale to said GRANTEE(s) dated October 14, 1963, recorded in Volume 782, Page 46, Deed Records of said County, Texas.

(c) The School Land Board, in determining the appropriate price for the sale of land described by this section, shall consider the title dispute and the history of the prior transactions.

(d) This section expires January 1, 2006.

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

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

**CSHB 2044** as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2044 ON THIRD READING**

Senator Staples moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2044** 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.

**VOTE RECONSIDERED ON  
HOUSE BILL 3374**

On motion of Senator Lucio and by unanimous consent, the vote by which **HB 3374** was finally passed on the Local and Uncontested Calendar today was reconsidered:

**HB 3374**, Relating to the creation, administration, powers, duties, operation, and financing of the Kenedy County Groundwater Conservation District.

Question — Shall **HB 3374** be finally passed?

Senator Lucio offered the following amendment to the bill:

**Floor Amendment No. 1 on Third Reading**

Amend **HB 3374** (Senate committee printing) as follows:

(1) Strike SECTION 4 of the bill and substitute the following:

SECTION 4. BOUNDARIES. The boundaries of the district are coextensive with Kenedy County, Texas and also include the following separate tracts:

(a) A tract of land known as the Laureles Ranch containing 255,026.53 acres, more or less, in Kleberg and Nueces Counties, Texas, being more particularly described in an oil, gas, and mineral lease from the Executors and Trustees under the will of Mrs. Henrietta M. King, deceased, to Humble Oil & Refining Company dated September 26, 1933, recorded in Volume 20, page 1-13, of the Oil and Gas Lease Records of Nueces County, Texas, and Volume 37, pages 183-189, of the Deed Records of Kleberg County, Texas, said tract having been described as Item First in said lease to which reference is here made for a complete description thereof;

(b) A tract of land known as the Santa Gertrudis Ranch containing 203,468.13 acres, more or less, in Kleberg, Jim Wells, and Brooks Counties, Texas, and composed of two parcels as follows:

(1) A parcel of land containing 173,028.90 acres, more or less, in Kleberg, Jim Wells, and Brooks Counties, being more particularly described in an oil, gas, and mineral lease from the Executors and Trustees under the will of Mrs. Henrietta M. King, deceased, to Humble Oil & Refining Company dated September 26, 1933, recorded in Volume 20, pages 1-13, of the Oil and Gas Lease Records of Nueces County, Texas, and Volume 37, pages 183-189, of the Deed Records of Kleberg County, Texas, said tract having been described as Item Second in said lease to which reference is here made for a complete description thereof; and

(2) A parcel of land containing 30,439.23 acres, more or less, in Kleberg and Jim Wells Counties, Texas, being more particularly described in an oil, gas, and mineral lease from Alice G. K. Kleberg to Humble Oil & Refining Company dated September 26, 1933, recorded in Volume 37, page 200-206, of the Deed Records of Kleberg County, Texas, and in Volume 50, page 166-172, of the Deed Records of Jim Wells County, Texas, to which reference is here made for a complete description thereof; and

(c) ALL of Farm Lots Twelve (12) and Thirteen (13), in Block or Section Number Nine (9), of the Kleberg Town and Improvement Company's Subdivision in Kleberg County, Texas or 74.62 acres more or less, AND BEING the same property conveyed to John B. Armstrong and Henrietta L. Armstrong, Trustees by Deed executed by Bessie Y. Larkin, et al, dated June 10, 1964, and filed for recorded in the Office of the County Clerk of Kleberg County, Texas, Volume 183, Pages 524-527; and

(d) Lot 3 of Survey 283, A-124, of C.B. & C.N.G.R.R. Co. according to Mrs. H. M. King Second Subdivision of Rivera Farm Lands, containing 77.89 acres of land, more or less, and being the same tract of land that was conveyed to King Ranch by J. F. McCullar by deed dated November 2, 1943, recorded in Vol. 61, page 90 of the Deed Records of Kleberg County, Texas.

(e) The tract of land described in Subsection (a) of this section does not include the 1999.96 acre tract of land described in Volume 1386, Pages 193-205, Nueces County Deed Records.

(f) The legislature finds that the boundaries and field notes of the district form a closure.

(2) On page 2, line 1 (committee printing) strike "entire district" and substitute "Santa Gertrudis Independent School District".

(3) On page 2, line 1 (committee printing) strike "county" and substitute "Kenedy County".

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

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

**HB 3374** as amended was again finally passed by a viva voce vote.

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

On motion of Senator Whitmire and by unanimous consent, Senate Rule 5.14(a) was suspended in order to allow bills to be placed on the Intent Calendar one day before they are eligible to be heard.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 3330 ON SECOND READING**

Senator Estes moved to suspend the regular order of business to take up for consideration **CSHB 3330** at this time on its second reading:

**CSHB 3330**, Relating to regulation of certain information logo signs along certain major highways.

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 3330 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3330** 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.

**(President in Chair)**

**COMMITTEE SUBSTITUTE  
HOUSE BILL 730 ON SECOND READING**

Senator Fraser moved to suspend the regular order of business to take up for consideration **CSHB 730** at this time on its second reading:

**CSHB 730**, Relating to residential construction, including certain warranties, building and performance standards, and dispute resolution; providing an administrative penalty.

The motion prevailed by a viva voce vote.

The bill was read second time.

Senator Fraser offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 730** (Senate committee printing) as follows:

(1) In Section 1.01 of the bill, in added Section 401.003(a)(2), Property Code (page 2, lines 18-19), strike "including the roof of an existing home" and substitute "other than an improvement solely to replace or repair a roof of an existing home".

(2) In Section 1.01 of the bill, in added Section 401.003(a)(3), Property Code (page 2, line 21), strike "\$10,000" and substitute "\$20,000".

(3) In Section 1.01 of the bill, in added Section 406.001, Property Code (page 3, lines 21-22), strike Subsection (a)(4) and substitute the following:

(4) one member must be either a licensed architect who practices in the area of residential construction or a building inspector who meets the requirements set forth in Chapter 427 and practices in the area of residential construction.

(4) In Section 1.01 of the bill, strike added Section 408.001, Property Code (page 5, lines 51-63), and substitute a new Section 408.001, Property Code, to read as follows:

Sec. 408.001. RULES. The commission shall adopt rules as necessary for the implementation of this title, including rules:

(1) governing the state-sponsored inspection and dispute resolution process, including building and performance standards, administrative regulations, and the conduct of hearings under Subtitle D;

(2) establishing limited statutory warranty and building and performance standards for residential construction;

(3) approving third-party warranty companies; and

(4) approving third-party inspectors.



(5) In Section 1.01 of the bill, in added Section 416.007, Property Code (page 7, between lines 55 and 56), insert the following new Subsection (c) at the appropriate place to read as follows:

(c) The commission shall issue one certificate of registration for each business entity registered under this Chapter.

(6) In Section 1.01 of the bill, in added Section 416.010, Property Code (page 8, line 27), strike "OFFICE LOCATION; CHANGE OF ADDRESS" and substitute "OFFICE LOCATION; CHANGE OF ADDRESS; ASSUMED NAMES".

(7) In Section 1.01 of the bill, in added Section 416.010, Property Code (page 8, between lines 38 and 39), insert the following new Subsection (c) at the appropriate place and renumber the subsequent subsection and any cross-references appropriately:

(c) If a builder operates under any name other than the name that is set forth on the builder's certificate of registration, the builder shall, within 45 days of operating under this other name, disclose this other name to the commission.

(8) In Section 1.01 of the bill, in added Section 428.003, Property Code (page 13, lines 33-36) strike Subsection (a) in its entirety and replace with a new Subsection (a) as follows:

"(a) On or before the 15th day after the date the commission receives a request, the commission shall appoint the next available third-party inspector from the applicable lists of third-party inspectors maintained by the commission under subsection (c)."

(9) In Section 1.01 of the bill, in added Section 428.003, Property Code (page 13, between lines 40-41) add a new Subsection (c) to read as follows:

"(c) The commission shall adopt rules that allow for the commission to maintain a list of available third-party inspectors for the various regions of the state, as required to satisfy the provisions of this Act."

(10) In Section 1.01 of the bill, in added Section 430.002, Property Code (page 15, line 52), strike "including" and substitute "that may include".

(11) In Section 1.01 of the bill, in added Section 430.009(b), Property Code (page 17, line 5), between "27.004" and ":", strike "(g)".

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

Senator Fraser offered the following amendment to the bill:

### **Floor Amendment No. 2**

Amend **CSHB 730** (Senate committee printing) as follows:

(1) In Section 1.01 of the bill, in added Section 401.002, Property Code (page 2, between lines 12 and 13), insert the following subdivision at the appropriate place and renumber other subdivisions appropriately:

(16) "Warranty of habitability" means a builder's obligation to construct a home or home improvement that is in compliance with the limited statutory warranties and building and performance standards adopted by the commission under Section 430.001, and that is safe, sanitary, and fit for humans to inhabit.

(2) In Section 1.01 of the bill, in added Chapter 430, Property Code (page 15, between lines 42 and 43), insert the following section at the appropriate place and renumber other sections and any cross-references appropriately:

Sec. 430.002. WARRANTY OF HABITABILITY. (a) The construction of each new home or home improvement shall include the warranty of habitability.

(b) For a construction defect to be actionable as a breach of the warranty of habitability, the defect must have a direct adverse effect on the habitable areas of the home and must not have been discoverable by a reasonable prudent inspection or examination of the home or home improvement within the applicable warranty periods adopted by the commission under Section 430.001.

(3) In Section 1.01 of the bill, in added Section 430.005, Property Code (page 16, line 12), strike "adopted under this chapter" and substitute "adopted under this chapter or the warranty of habitability".

(4) In Section 1.01 of the bill, in added Section 430.007, Property Code (page 16, lines 35-40), strike Subsection (b) and substitute the following:

(b) A limitation of liability under this section is not effective unless the company providing the warranty:

(1) agrees to perform the builder's warranty obligations under this chapter that are covered by the warranty provided through the third-party warranty company; and

(2) actually pays for or corrects any construction defect covered by the warranty provided through the third-party warranty company.

(5) In Section 1.01 of the bill, in added Section 430.008, Property Code (page 16, lines 59 and 60), strike "commission, but it may not reduce the limited statutory warranty and building and performance standards" and substitute "commission. A third-party warranty company may not reduce the limited statutory warranty and building and performance standards, except that a third-party warranty company shall not be required to provide a warranty of habitability".

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

Senator Duncan offered the following amendment to the bill:

### **Floor Amendment No. 3**

Amend **CSHB 730** (Senate committee printing) as follows:

(1) In SECTION 1.01 of the bill, in added Subtitle C, Title 16, Property Code, insert the following chapter (page 8, between lines 59 and 60):

#### CHAPTER 417. CERTIFICATION OF RESIDENTIAL CONSTRUCTION ARBITRATORS

Sec. 417.001. CERTIFICATION. (a) The commission by rule shall establish eligibility requirements and procedures for a person to be certified by the commission as a residential construction arbitrator.

(b) The requirements established under this section must, at a minimum, require a certified arbitrator to:

(1) have at least five years' experience in conducting arbitrations between homeowners and builders involving construction defects;

(2) be familiar with the statutory warranties and building and performance standards established under Chapter 430 and with the provisions of Chapter 27; and

(3) meet continuing education requirements established by the commission.

(c) Nothing in the chapter prohibits an arbitrator who does not hold a certificate under this chapter from conducting an arbitration involving a residential construction defect.

Sec. 417.002. APPLICATION FOR CERTIFICATION. An applicant for certification under this chapter or for renewal of that certification must submit an application on a form prescribed by the commission and include the fee required by Section 417.003.

Sec. 417.003. FEES. The commission shall charge and collect:

(1) a filing fee for an application for certification under this chapter that does not exceed \$100; and

(2) a fee for renewal of a certification under this chapter that does not exceed \$50.

Sec. 417.004. PUBLICATION AND COMMENT PERIOD; CERTIFICATION.

(a) The commission shall publish notice of each applicant's original application for certification under this chapter in the Texas Register and allow public comment on the application during the 21 days after the date the notice is published. During that period, any person may contest the application in writing submitted to the commission.

(b) If the commission finds that certification of the applicant is in the public interest, the commission shall certify the applicant under this chapter.

Sec. 417.005. DENIAL OF CERTIFICATION. The commission shall establish procedures under which a denial of a certification under this chapter may be contested by the applicant.

Sec. 417.006. EXPIRATION OF CERTIFICATION. The commission may issue or renew a certification under this chapter for a period that does not exceed 24 months.

Sec. 417.007. LIST OF CERTIFIED ARBITRATORS. The commission shall maintain an updated list of residential construction arbitrators certified under this chapter and make the list available to the public.

(2) In SECTION 1.01 of the bill, in added Section 417.001(1), Property Code (page 8, lines 63 and 64), strike "certificate of registration" and substitute "registration or certification under this subtitle".

(3) In SECTION 1.01 of the bill, in added Section 417.002, Property Code, strike "certificate of registration" wherever it appears and substitute "registration or certification" (page 9, lines 21-23).

(4) In SECTION 1.01 of the bill, in added Section 417.002, Property Code, strike "certificate holder" and substitute "registered or certified person" (page 9, lines 24 and 25).

(5) In SECTION 1.01 of the bill, in added Chapter 418, Property Code, strike "certificate holder" wherever it appears and substitute "registered or certified person" (page 9, line 46, and page 10, lines 1 and 2).

(6) In ARTICLE 1 of the bill, insert the following appropriately numbered SECTION:

SECTION \_\_\_\_\_. On or before March 1, 2004, the Texas Residential Construction Commission shall begin certifying arbitrators under Chapter 417, Property Code, as added by this article.

(7) Renumber and reletter appropriately.

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

Senator Duncan offered the following amendment to the bill:

#### **Floor Amendment No. 4**

Amend **CSHB 730** (Senate committee printing) as follows:

(1) In SECTION 1.01, following added Subtitle D, Title 16, Property Code (page 17, between lines 8 and 9), insert:

#### SUBTITLE E. RESIDENTIAL CONSTRUCTION ARBITRATION

##### CHAPTER 436. GENERAL PROVISIONS

Sec. 436.001. DEFINITIONS. In this subtitle:

(1) "Arbitration" means the procedure for dispute resolution described by Section 154.027, Civil Practice and Remedies Code.

(2) "Arbitration services provider" means a person that holds itself out as:

(A) managing, coordinating, or administering arbitrations;

(B) providing the services of arbitrators;

(C) making referrals or appointments to arbitrators; or

(D) providing lists of arbitrators.

(3) "Arbitrator" means a neutral individual who hears the claims of the parties to a dispute and renders a decision and who is:

(A) chosen by the parties to the dispute;

(B) appointed by a court; or

(C) selected by an arbitration services provider under an agreement of the parties or applicable rules.

Sec. 436.002. APPLICABILITY. (a) This subtitle applies only to an arbitration of a dispute between a homeowner and a builder that involves an alleged construction defect.

(b) The requirements of this subtitle supplement Chapter 171, Civil Practice and Remedies Code, and the Federal Arbitration Act (9 U.S.C. Sections 1-16), as amended.

Sec. 436.003. VENUE. (a) An arbitration of a dispute involving a construction defect shall be conducted in the county in which the home alleged to contain the defect is located.

(b) The requirements of this section may not be waived by contract.

Sec. 436.004. RESIDENTIAL CONSTRUCTION ARBITRATION TASK FORCE. (a) The commission shall appoint a task force to study residential arbitrators and arbitration and advise the commission with respect to residential arbitrators and arbitration.

(b) The task force established under this section shall report to the 79th and 80th legislatures on the task force's recommendations and the effect of the implementation of those recommendations and of the provisions relating to arbitrators and arbitration in this subtitle. This subsection expires September 1, 2007.

##### CHAPTER 437. REPORTING REQUIREMENTS

Sec. 437.001. AWARD FILING. (a) If an arbitration award is filed in a court of competent jurisdiction in this state, the filer shall also, not later than the 30th day after the date an award is made in a residential construction arbitration, the arbitrator who

conducts the arbitration or, if an arbitration services provider administers the arbitration, the services provider shall file with the commission a summary of the arbitration award that includes:

- (1) the names of the parties to the dispute;
- (2) the name of each party's attorney, if any;
- (3) the name of the arbitrator who conducted the arbitration;
- (4) the name of the arbitration services provider who administered the arbitration, if any;
- (5) the fee charged to conduct the arbitration;
- (6) a general statement of each issue in dispute;
- (7) the arbitrator's determination, including the party that prevailed in each issue in dispute and the amount of any monetary award; and
- (8) the date of the arbitrator's award.

(b) The commission shall establish rules to permit the voluntary filing of the information listed in subsection (a) by any interested party. Any agreement prohibiting the disclosure of the information listed in subsection (a) is unenforceable.

Sec. 437.002. ENFORCEMENT. (a) The commission by rule shall establish a fee not to exceed \$100 for the late filing of an arbitration award and procedures for the collection of that fee.

(b) A party to an arbitration, or an attorney for a party, may report an overdue filing of an arbitration award to the commission.

#### CHAPTER 438. ENFORCEABILITY OF RESIDENTIAL CONSTRUCTION ARBITRATION AWARDS

Sec. 438.001. GROUNDS FOR VACATING AWARD. In addition to grounds for vacating an arbitration award under Section 171.088, Civil Practice and Remedies Code, on application of a party, a court shall vacate an award in a residential construction arbitration upon a showing of manifest disregard for Texas law.

(2) In ARTICLE 1 of the bill, following SECTION 1.05 (page 17, between lines 41 and 42), insert the following new SECTION, numbered appropriately:

SECTION 1. \_\_\_\_. (a) Section 436.003, Property Code, as added by this article, governs the venue of an arbitration initiated on or after the effective date of this Act under a residential construction contract entered into before, on, or after the effective date of this Act, unless otherwise provided by a contract entered into before the effective date of this Act.

(b) Chapter 437, Property Code, as added by this article, applies only to an arbitration initiated on or after January 1, 2004. An arbitration initiated before that date is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(c) Chapter 438, Property Code, as added by this article, applies only to an arbitration initiated on or after the effective date of this Act. An arbitration initiated before that date 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 Duncan offered the following amendment to the bill:

**Floor Amendment No. 5**

Amend **CSHB 730** in ARTICLE 1, SECTION 1.01, added Section 426.008(a), Property Code (Senate committee printing) as follows:

(1) On page 11, line 52, between "presumption" and ":" insert the following: "of the existence or non-existence of a construction defect or the reasonable manner of repair of the construction defect".

(2) On page 11, line 53, strike "clear and convincing" and substitute "a preponderance of the".

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

Senator Duncan offered the following amendment to the bill:

**Floor Amendment No. 6**

Amend **CSHB 730** (Senate committee printing) as follows:

(1) In Section 1.01 of the bill, in newly-added Section 426.005, Property Code (page 11, lines 14-19), strike Subsection (b) and substitute the following:

"(b) An action described by Subsection (a) must be filed:

(1) on or before the expiration of any applicable statute of limitations or by the 45th day after the date the third-party inspector issues the inspector's recommendation, whichever is later; or

(2) if the recommendation is appealed, on or before the expiration of any applicable statute of limitations or by the 45th day after the date the commission issues its ruling on the appeal, whichever is later."

(2) In Section 1.01 of the bill, in newly-added Section 428.001(h), Property Code (page 13, line 13), strike "in an action" and substitute "in any action".

(3) In Section 1.01 of the bill, in newly-added Section 430.004, Property Code (page 16, lines 7-8), strike the sentence that reads "A court may not discern or declare any other implied warranty."

(4) In Section 1.01 of the bill, in newly-added Section 430.007, Property Code (page 16, lines 31-34), strike new Subsection (a) and substitute the following:

(a) A builder may elect to provide a warranty through a third-party warranty company approved by the commission.

(5) In Section 1.01 of the bill, in newly-added Section 430.007(b), Property Code (page 16, line 35), strike "limitation" and substitute "transfer".

(6) In Section 1.01 of the bill, in newly-added Section 430.009, Property Code (page 16, lines 62-65), strike the sentence that reads "This subtitle provides the sole rights and obligations between a homeowner and a builder unless additional rights and obligations are provided in and express, written contract between the homeowner and the builder."

(7) In Section 1.01 of the bill, in newly-added Section 430.009, Property Code (page 17, line 3), strike "subsection" and substitute "subtitle".

(8) In Section 1.01 of the bill, in newly-added Section 430.009, Property Code (page 17, lines 6-8), strike Subsection (c) and substitute a new Subsection (c) as follows:

(c) Breach of a limited statutory warranty adopted by the commission or breach of the statutory warranty of habitability shall not, by itself, constitute a violation of the Deceptive Trade Practice-Consumer Protection Act (Subchapter E, Chapter 17, Business and Commerce Code).

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

Senator Duncan offered the following amendment to the bill:

**Floor Amendment No. 7**

Amend **CSHB 730** (Senate committee printing) as follows:

(1) In Section 2.04 of the bill, page 21, strike lines 10 through 17, and insert the following:

(f) If a contractor fails to make a reasonable offer under Subsection (b), the limitations on damages provided for in Subsection (e) shall not apply.

(2) In Section 2.04 of the bill, page 22, line 32, before "SECTION 2.05" insert the following new subsection:

(q) If a contractor refuses to initiate repairs under an accepted offer made under this section, the limitations on damages provided for in this section shall not apply.

(3) In Section 2.05 of the bill, in newly-added Section 27.0042, Property Code (page 22, line 44) strike lines 44 through 46 and insert the following:

(b) A contractor may not elect to purchase the residence under Subsection (a) if:

(1) the residence is more than five years old at the time an action is initiated; or

(2) the contractor makes such an election later than the 15th day after the date of a final, unappealable determination of a dispute under Subtitle D., Title 16, if applicable.

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. 8**

Amend **CSHB 730** (Senate committee printing) in SECTION 1.01 of the bill as follows:

(1) In the heading of added Section 426.004, Property Code, strike "APPLICATION AND INSPECTION" (page 10, line 61).

(2) In added Section 426.004, Property Code, strike Subsections (a) and (b) (page 10, line 61, through page 11, line 3), and substitute the following:

(a) A party who submits a request under this subtitle shall pay any amount required by the commission to cover the expense of the third-party inspector.

(b) The commission shall adopt rules permitting a waiver or reduction of the inspection expenses for homeowners demonstrating a financial inability to pay the expenses.

(3) In added Section 426.004(c), Property Code, strike "application fee and" (page 11, line 9).

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

Senator Lucio offered the following amendment to the bill:

**Floor Amendment No. 9**

Amend **CSHB 730** in SECTION 1.01 of the bill, in added Chapter 430, Property Code, by inserting the following section (page 15, between lines 68 and 69) and renumbering sections and cross-references appropriately:

Sec. 430.004. ALTERNATIVE STANDARDS FOR CERTAIN CONSTRUCTION. For the purpose of this title, the only statutory warranty and building and performance standards that apply to residential construction in unincorporated areas of counties that are considered economically distressed areas as defined by Section 15.001(11) of the Water Code and located within 50 miles of an international border are the standards established for colonia housing programs administered by the Texas Department of Housing and Community Affairs, unless a county commissioners court has adopted other building and performance standards authorized by statute.

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

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

**CSHB 730** as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 730 ON THIRD READING**

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 730** 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.

**AT EASE**

Senator Armbrister at 2:45 p.m. moved that the Senate stand At Ease subject to the call of the Chair.

The motion prevailed without objection.

**IN LEGISLATIVE SESSION**

The President at 3:13 p.m. called the Senate to order as In Legislative Session.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1131 ON SECOND READING**

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1131** at this time on its second reading:

**CSHB 1131**, Relating to insurer interests in certain motor vehicle repair facilities; providing a civil penalty.

The bill was read second time.



Senator Carona offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1131**, Senate committee printing, as follows:

(1) In SECTION 1 of the bill, in added Section 2306.004(c), Occupations Code (page 2, lines 16-18), strike "offering the repair facility a reasonable opportunity to cure the alleged failure to meet the requirements of the favored facility agreement" and substitute "explaining the reason for the cancellation of the agreement".

(2) In SECTION 1 of the bill, in added Section 2306.004(d), Occupations Code (page 2, line 23), strike "is guilty of fraudulent conduct in its dealings with the insurer" and substitute "is fraudulent in its dealings with the insurer or the policyholder or other beneficiaries under the insurer's policy".

(3) In SECTION 1 of the bill, in added Section 2306.006(6), Occupations Code (page 2, line 55), between "logo" and the semicolon, insert "in a manner different than that allowed for any other favored facility".

(4) In SECTION 1 of the bill, in added Section 2306.006, Occupations Code (page 2, line 69 through page 3, line 4), strike Subdivision (10) and substitute the following:

"(10) require a policyholder or beneficiary to use a claims center located on the premises of a tied repair facility;".

The floor amendment was read and was adopted without objection.

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

**CSHB 1131** as amended was passed to third reading without objection.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1131 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1131** 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 3569 ON SECOND READING**

On motion of Senator Ratliff and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3569** at this time on its second reading:

**HB 3569**, Relating to the creation, administration, powers, duties, operation, and financing of the Rusk County Groundwater Conservation District.

The bill was read second time and was passed to third reading without objection.

**HOUSE BILL 3569 ON THIRD READING**

Senator Ratliff moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3569** 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 622 ON SECOND READING**

Senator Deuell moved to suspend the regular order of business to take up for consideration **HB 622** at this time on its second reading:

**HB 622**, Relating to business leave time accounts for police officer employee organizations in certain municipalities.

The motion prevailed by a viva voce vote.

**RECORD OF VOTE**

Senator Shapiro 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 Shapiro asked to be recorded as voting "Nay" on the passage of **HB 622** to third reading.

**HOUSE BILL 622 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 622** be placed on its third reading and final passage.

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

Nays: Shapiro.

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

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

May 27, 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 271**, Honoring Second Lieutenant Cory Steele of The Woodlands for his service in Iraq.

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**SB 880** (non-record vote)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**(Senator Fraser in Chair)**

**COMMITTEE SUBSTITUTE  
HOUSE BILL 7 ON SECOND READING**

Senator Bivins moved to suspend the regular order of business to take up for consideration **CSHB 7** at this time on its second reading:

**CSHB 7**, Relating to making supplemental appropriations and making reductions in current appropriations.

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

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

Nays: Barrientos, Gallegos.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

**Floor Amendment No. 1**

**CSHB 7** is amended in Section 16(d) of the bill by striking subsection (14) relating to the Fair Defense Account of the Office of Court Administration and renumbering all following subsections appropriately.

The floor amendment was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Barrientos, Ellis, Estes, Gallegos, Lindsay, Lucio, Madla, Shapleigh, Van de Putte, Wentworth, West.

Nays: Armbrister, Averitt, Bivins, Brimer, Carona, Deuell, Duncan, Fraser, Harris, Hinojosa, Jackson, Janek, Nelson, Ogden, Ratliff, Shapiro, Staples, Whitmire, Williams, Zaffirini.

**CSHB 7** was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 7 ON THIRD READING**

Senator Bivins moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 7** be placed on its third reading and final passage.

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

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

Nays: Barrientos, Gallegos.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2. (Same as previous roll call)

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

On motion of Senator Bivins and by unanimous consent, Senate Rule 2.02 was suspended to grant floor privileges to his staff members during the deliberation of **CSHB 3459**.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3459 ON SECOND READING**

Senator Bivins moved to suspend the regular order of business to take up for consideration **CSHB 3459** at this time on its second reading:

**CSHB 3459**, Relating to fiscal matters involving certain governmental educational entities, including public school finance, program compliance monitoring by the Texas Education Agency, amounts withheld from compensatory education allotments, the public school technology allotment, the composition of and accounting for the permanent school fund and the available school fund, health insurance coverage provided by certain educational entities, and the uses of the telecommunications infrastructure fund.

The motion prevailed by a viva voce vote.

**RECORD OF VOTES**

Senators Barrientos and Gallegos asked to be recorded as voting "Nay" on the suspension of the regular order of business.

The bill was read second time.

Senator Bivins offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 3459** by adding three appropriately numbered sections as follows, and renumbering all other sections accordingly:

AMENDMENT SECTION 1. Section 44.031(a), Education Code, is amended to read as follows:

(a) Except as provided by this subchapter, all school district contracts, except contracts for the purchase of produce or vehicle fuel, valued at \$25,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provides the best value for the district:

- (1) competitive bidding;
- (2) competitive sealed proposals;
- (3) a request for proposals, for services other than construction services;
- (4) a catalogue purchase as provided by Subchapter B, Chapter 2157, Government Code;
- (5) an interlocal contract;
- (6) a design/build contract;
- (7) a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager;
- (8) a job order contract for the minor construction, repair, rehabilitation, or alteration of a facility; ~~or~~
- (9) the reverse auction procedure as defined by Section 2155.062(d), Government Code; or
- (10) the formation of a political subdivision corporation under Section 304.001, Local Government Code.

AMENDMENT SECTION 2. Section 304.001(a), Local Government Code, is amended to read as follows:

(a) In this chapter, "political subdivision" means a county, municipality, school district, hospital district, or any other political subdivision receiving electric service from an entity that has implemented customer choice, as defined in Section 31.002, Utilities Code.

AMENDMENT SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

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

Senator Bivins offered the following amendment to the bill:

### **Floor Amendment No. 2**

Amend **CSHB 3459** (Senate committee report) as follows:

- (1) On page 1, line 42, after the word "Subchapter" strike the letter "A".
- (2) On page 8, line 4, strike "39.051(a)" and add "39.031(a)".
- (3) On page 10, line 50, insert a new SECTION 27.
- (4) SECTION 27. Section 45.201, Education Code, is amended by amending Subsection (4) to read as follows:
  - (A) "Approved securities" means:
    - (A) bonds of this state or any agency or political subdivision of this state;
    - (B) all evidences of indebtedness legally issued by the board of trustees of the depositing school district;
    - (C) all debt securities that are a direct obligation of the treasury of the United States;

(D) other obligations, including all debt securities, except reducing principal balance securities, the principal and interest of which are unconditionally guaranteed or insured by, or backed in the event of default by the full faith and credit of, this state or the United States or their respective agencies and instrumentalities; and

(E) those securities provided for by Article 842, Revised Statutes, and Section 1, Chapter 160, General Laws, Acts of the 43rd Legislature, 1933 (Article 842a, Vernon's Texas Civil Statutes).

(5) Delete SECTION 30 on page 11, line 48 through page 12, line 9.

(6) On page 12, line 21, insert a new SECTION 32.

SECTION 32. Section 2257.022, Government Code, is amended to read as follows:

Sec. 2257.022. AMOUNT OF COLLATERAL. (a) Except as provided by Subsection (b), the ~~The~~ total value of eligible security to secure a deposit of public funds must be in an amount not less than the amount of the deposit of public funds:

(1) increased by the amount of any accrued interest; and

(2) reduced to the extent that the United States or an instrumentality of the United States insures the deposit.

(b) The total value of eligible security described by Section 45.201(4)(D), Education Code, to secure a deposit of public funds of a school district must be in an amount not less than 110 percent of the amount of the deposit. The total market value of the eligible security must be reported at least once each month to the school district.

(c) The value of a surety bond is its face value.

(d) ~~(e)~~ The value of an investment security is its market value.

(7) Renumber Accordingly.

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. 3**

Amend **CSHB 3459** by adding the following SECTION in the appropriate place and renumber accordingly:

(1) "SECTION \_\_\_\_\_. (a) The comptroller of public accounts shall contract with a consultant for a comprehensive audit of regional education service centers in this state. The audit must include:

(1) a detailed analysis of all services provided by regional education service centers that identifies, for each service provided:

(A) the percentage of school districts receiving the service;

(B) the costs to the regional education service centers of providing the service;

(C) the charges imposed on school districts by the regional education service centers for providing the service; and

(D) the difference between the amount determined under Paragraph (B) of this subdivision and the amount determined under Paragraph (C) of this subdivision;

(2) an evaluation of whether any services provided by a regional education service center could be provided at a lower cost by an alternative service provider, as determined based on a survey of potential alternative service providers;

(3) an analysis of the governance structures of regional education service centers;

(4) a review of the financial condition of regional education service centers and their current funding sources to determine the adequacy of state appropriations to regional education service centers and whether those appropriations should continue to be made;

(5) a review of the number and geographic distribution of regional education service centers;

(6) a review of the institutional structure of regional education service centers, with consideration of whether a separate system of Texas Education Agency field offices would be appropriate or whether any regional education service center functions should be transferred to Texas Education Agency facilities; and

(7) an analysis of the support functions of regional education service centers to determine whether support requirements could be decreased through business processes or application redesigns.

(b) Costs of the audit required by Subsection (a) of this section shall be paid using amounts appropriated for the fiscal biennium ending August 31, 2005, to regional education service centers or to the Texas Education Agency for the costs of services provided by regional education service centers, not to exceed a total amount of \$750,000.

(c) Not later than December 1, 2004, the comptroller of public accounts shall submit a report to the legislature concerning the results of the audit required by Subsection (a) of this section. The report must include recommendations for a regional education service center funding mechanism under which at least 80 percent of center funds are derived from fee-for-service contracts with school districts."

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. 4**

Amend **CSHB 3459** by adding the following SECTIONS in the appropriate place and renumber accordingly:

"SECTION \_\_\_\_\_. Subsection (a), Section 13.005, Education Code, is amended to read as follows:

(a) Except as provided by this section or by a local consolidation agreement under Section 13.158, the annexation of all or part of the territory of one district to another is effective on the first July 1 that is more than 30 days after the date of the order or ordinance accomplishing the annexation or of the declaration of the results of an election at which the transfer is approved."

"SECTION \_\_\_\_\_. Section 13.152, Education Code, is amended to read as follows:

Sec. 13.152. RESOLUTION OR PETITION. Consolidation is initiated in each district proposed to be consolidated by either a resolution adopted by the board of trustees of the [~~each~~] district or a petition requesting an election on the question that is

signed by the required number of registered voters of the district [~~each of the districts proposed to be consolidated~~]. Each district is not required to use the same method to initiate consolidation."

"SECTION \_\_\_\_\_. Section 13.153, Education Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) If no local consolidation agreement is submitted under Section 13.158, the [~~The~~] ballot in the election shall be printed to permit voting for or against the proposition: "Consolidation of (name of school districts) into a single school district."

(c) If a local consolidation agreement is submitted under Section 13.158, the ballot in the election shall be printed to permit voting for or against the proposition: "Consolidation of (name of school districts) into a single school district under a local consolidation agreement."

"SECTION \_\_\_\_\_. Subsections (b) and (c), Section 13.155, Education Code, are amended to read as follows:

(b) Except as provided by Subsection (c) or by a local consolidation agreement under Section 13.158, the board of trustees of the school district having the greatest membership on the last day of the school year preceding the consolidation serves as the board of trustees of the consolidated district until the next regular election of trustees, at which time the consolidated district shall elect a board of trustees.

(c) Except as provided by a local consolidation agreement under Section 13.158, if [~~If~~] the membership on the last day of the school year preceding the consolidation in the district with the largest membership is more than five times that of the other district or districts consolidating with it, the trustees of the district with the largest membership continue to serve for the terms for which they have been elected and only the vacancies, as they occur, are filled from the consolidated district."

"SECTION \_\_\_\_\_. Subchapter D, Chapter 13, Education Code, is amended by adding Section 13.158 to read as follows:

Sec. 13.158. LOCAL CONSOLIDATION AGREEMENT. (a) Before issuing an order for an election under Section 13.153, the boards of trustees of the districts to be consolidated may draft a local consolidation agreement to be submitted to the registered voters in each district. An agreement must set out the composition and method of election of the consolidated board of trustees. The identical agreement must be submitted to the registered voters of each district.

(b) A local consolidation agreement may provide the following:

(1) an effective date that is not more than one year after the date of the consolidation election;

(2) a schedule to elect the board of trustees of the consolidated district before or after the effective date of consolidation;

(3) that the consolidated district educate particular grades within the boundaries of a district being consolidated;

(4) that the consolidated district maintain a specific campus in operation;

(5) that if the votes cast in some districts, but not all districts, show a majority voting in favor of the consolidation, the districts receiving a favorable vote may consolidate;

(6) that a majority of the votes cast in each district must be in favor of consolidation for there to be a consolidation; or



(7) any other provision consistent with state and federal law.

(c) Not later than 30 days before a consolidation election is held, the boards of trustees of the districts to be consolidated may amend the local consolidation agreement. After a successful election to consolidate, the local consolidation agreement may not be amended for five years following the effective date of consolidation, unless a shorter period is set out in the agreement. After that time, the agreement may be amended only by unanimous vote of the board of trustees of the district.

(d) The commissioner may waive a requirement under this section or Section 13.159 on application of the boards of trustees of all districts proposed for consolidation."

"SECTION \_\_\_\_\_. Subchapter D, Chapter 13, Education Code, is amended by adding Section 13.159 to read as follows:

Sec. 13.159. PUBLIC INSPECTION AND HEARING. (a) A local consolidation agreement under Section 13.158 must be made available for public inspection during regular business hours at the central administration building of each district for at least 25 days before the consolidation election.

(b) Each district shall hold a public hearing to allow interested persons to present comments related to the local consolidation agreement. If the agreement is amended following a public hearing, before the consolidation election each district shall hold another public hearing to consider the amendment.

(c) Each district shall provide notice of each public hearing to the public."

"SECTION \_\_\_\_\_. Section 41.033, Education Code, is amended to read as follows:

Sec. 41.033. GOVERNANCE PLAN. (a) The agreement among the consolidating districts may include a governance plan designed to preserve community-based and site-based decision making within the consolidated district, including the delegation of specific powers of the governing board of the district other than the power to levy taxes, including a provision authorized by Section 13.158(b).

(b) The governance plan may provide for a transitional board of trustees during the first year after consolidation, but beginning with the next year the board of trustees must be elected from within the boundaries of the consolidated district [~~from single member districts drawn in accordance with the procedures provided by Section 41.052~~]. If the consolidating districts elect trustees from single-member districts, the consolidated district must adopt a plan to elect its board of trustees from single-member districts."

"SECTION \_\_\_\_\_. (a) The changes in law made by this Act to Subsection (a), Section 13.005, Education Code, Subsections (b) and (c), Section 13.155, Education Code, and Section 41.033, Education Code, apply only to a school district consolidated with an effective date on or after the effective date of this Act. A school district consolidated with an effective date before the effective date of this Act is covered by the law in effect on the effective date of the district's consolidation, and the former law is continued in effect for that purpose."

The floor amendment was read and was adopted without objection.

Senator Zaffirini offered the following amendment to the bill:

**Floor Amendment No. 5**

Amend **CSHB 3459** by adding appropriately numbered SECTIONS and renumbering remaining SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 11.164, Education Code, is amended to read as follows:

Sec. 11.164. RESTRICTING WRITTEN INFORMATION ~~[REPORTS]~~.

(a) ~~The [On an annual basis, the] board of trustees of each school district shall limit redundant requests for information and [after soliciting recommendations from each campus level committee and the district level committee, consider] the number and length of written reports that a classroom teacher is [employees of the district are] required to prepare. A classroom teacher may not be required to prepare any written information other than:~~

(1) any report concerning the health, safety, or welfare of a student;

(2) a report of a student's grade on an assignment or examination;

(3) a report of a student's academic progress in a class or course;

(4) a report of a student's grades at the end of each grade reporting period;

(5) a textbook report;

(6) a unit or weekly lesson plan that outlines, in a brief and general manner, the information to be presented during each period at the secondary level or in each subject or topic at the elementary level;

(7) an attendance report;

(8) any report required for accreditation review;

(9) any information required by a school district that relates to a complaint, grievance, or actual or potential litigation and that requires the classroom teacher's involvement; or

(10) any information specifically required by law, rule, or regulation.

(b) The board of trustees shall review paperwork requirements imposed on classroom teachers and shall transfer to existing noninstructional staff a reporting task that can reasonably be accomplished by that staff.

(c) This section does not preclude a school district from collecting essential information, in addition to information specified under Subsection (a), from a classroom teacher on agreement between the classroom teacher and the district.

SECTION \_\_\_\_\_. This Act applies beginning with the 2003-2004 school year.

The floor amendment was read and was adopted without objection.

Senator Shapleigh offered the following amendment to the bill:

**Floor Amendment No. 6**

Amend **CSHB 3459** by substituting the following for Sec. 42.152(u) in Section 19 of the bill on page 18, lines 16-26:

(u) For the 2003-2004 and 2004-2005 school years, notwithstanding the allotments and reductions otherwise required or permitted by this section or Section 39.031, the legislature may in the General Appropriations Act reduce the total amount of funding for the compensatory education allotment by not more than the sum of all of the changes, made to programs funded through deductions to the compensatory

education allotment to which a district is otherwise entitled under Subsection (a), under House Bill 1, Acts of the 78th Legislature. After deducting the amount of a reduction made as provided by this subsection from the total amount computed for the allotment under Subsection (a), the commissioner shall:

(1) reduce each district's tier one allotments in the same manner described for a reduction in allotments under Section 42.253; and

(2) allocate funds to each district accordingly.

This provision expires on September 1, 2005.

The floor amendment was read and was adopted without objection.

Senator Madla offered the following amendment to the bill:

### **Floor Amendment No. 7**

Amend **CSHB 3459** by adding the following new SECTION to the bill, appropriately numbered, and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 11.159, Education Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) Each regional education service center shall annually prepare a report that names each trustee of a school district located in the service center's region who has completed the training required by the State Board of Education. The service center shall provide the report to the agency, and the agency shall publish the report on the agency website. The State Board of Education may adopt rules as necessary to implement this subsection.

(d) The agency and the State Board of Education shall conduct a review of the educational training requirements for trustees, including the content of the training and the number of hours of training required for a trustee. The State Board of Education and the agency shall report the findings of the review to the legislature not later than January 1, 2005. This subsection expires February 1, 2005.

The floor amendment was read and was adopted without objection.

Senator Shapleigh offered the following amendment to the bill:

### **Floor Amendment No. 8**

Amend **CSHB 3459** by adding the following appropriately numbered SECTION to the bill and by renumbering existing SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 34.007(b), Education Code, is amended to read as follows:

(b) In establishing and operating the transportation system, the county or school district board

(1) shall employ school bus drivers certified in accordance with standards and qualifications adopted by the Department of Public Safety; and

(2) may allow a parent to designate one of the following locations [~~a child care facility, as defined by Section 42.002, Human Resources Code,~~] instead of the child's residence as the regular location for purposes of obtaining transportation under the system to and from the child's school:

(A) a child-care facility, as defined by Section 42.002, Human Resources Code; or

(B) the residence of a grandparent of the child.

SECTION \_\_\_\_\_. Subsection (k), Section 42.155, Education Code, is amended to read as follows:

(k) Notwithstanding any other provision of this section, the commissioner may not reduce the allotment to which a district or county is entitled under this section because the district or county provides transportation for an eligible student to and from a child-care facility, as defined by Section 42.002, Human Resources Code, or a grandparent's residence instead of the student's residence, as authorized by Section 34.007, if the transportation is provided within the approved routes of the district or county for the school the student attends.

The floor amendment was read and was adopted without objection.

**Floor Amendment No. 9 was not offered.**

Senator Ogden offered the following amendment to the bill:

**Floor Amendment No. 10**

Amend **CSHB 3459** by adding the following appropriately numbered SECTIONS and renumbering the other SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 53.02, Education Code, is amended by adding Subdivision (14) to read as follows:

(14) "Borrower" means any of the following entities that is the recipient of a loan made under Section 53.34:

(A) an institution of higher education;

(B) a nonprofit corporation incorporated by and under the exclusive control of an institution of higher education;

(C) an accredited primary or secondary school; or

(D) an accredited charter school.

SECTION \_\_\_\_\_. Section 53.33, Education Code, is amended to read as follows:

Sec. 53.33. LIMITED POWER TO ACQUIRE, OWN, AND OPERATE EDUCATIONAL AND HOUSING FACILITIES[~~— CONSTRUCTION, ACQUISITION, ETC~~]. (a) An [The] authority or a nonprofit instrumentality created under Section 53.35(b) may acquire, own, hold title to, lease, or operate an educational facility or housing facility or any facility incidental, subordinate, or related to or appropriate in connection with an educational facility or housing facility, but only if:

(1) the facility is or will be located within the corporate limits of the city that created the authority or nonprofit instrumentality;

(2) the governing body of an institution of higher education officially requests the authority or nonprofit instrumentality to acquire and own the facility for the benefit of the institution of higher education;

(3) the institution of higher education officially agrees to accept, and has authority to receive legal title to, the facility not later than the date on which any bonds or other obligations issued to acquire the facility are paid in full; and

(4) the ownership of the facility by the authority or the nonprofit instrumentality is approved by official action of the governing body of:

- (A) the city that created the authority or nonprofit instrumentality;
- (B) the school district in which the facility is or will be located; and
- (C) the county in which the facility is or will be located.

(b) An authority or instrumentality that exercises the powers granted by Subsection (a) may contract for the operation of the facility by public or private entities or persons on the terms and conditions set forth in a contract relating to the operation of the facility.

(c) The changes in law made by the amendment of this section by the 78th Legislature at the 2003 Regular Session do not affect the acquisition, ownership, construction, or improvement of a facility, or the acquisition and ownership of land that were approved by official action of the authority or nonprofit corporate instrumentality before March 15, 2003, and the law in effect immediately before the effective date of the amendment of this section by the 78th Legislature at the 2003 Regular Session is continued in effect for that purpose [by purchase, purchase contract, or lease, may construct, or may enlarge, extend, repair, renovate, or otherwise improve educational facilities or housing facilities. It may acquire land for those purposes, furnish and equip the facilities, and provide by contract, lease, or otherwise for the operation and maintenance of the facilities. The facilities need not be located within the city limits of the city or cities].

SECTION \_\_\_\_ . Section 53.34, Education Code, is amended to read as follows:

Sec. 53.34. REVENUE BONDS. (a) An [The] authority or a nonprofit instrumentality created under Section 53.35(b), including an authority or nonprofit instrumentality authorized to own facilities under Section 53.33(a), may issue and execute revenue bonds or other obligations to loan or otherwise provide funds to a borrower if:

(1) the governing body of the borrower by official action requests the issuer of the bonds or other obligations to loan the proceeds under this subsection;

(2) the purpose of the loan is to enable the borrower to acquire, construct, enlarge, extend, repair, renovate, or otherwise improve an educational facility or housing facility or any facility incidental, subordinate, or related to or appropriate in connection with an educational facility or housing facility, or for acquiring land to be used for those purposes, or to create operating and debt service reserves for and to pay issuance costs related to the bonds or other obligations; and

(3) under the terms of the loan, and unless a mortgage lien granted to secure the loan is in default, the ownership of the facility is required to be at all times under the exclusive control, and held for the exclusive benefit, of the borrower [for any of its purposes].

(b) In issuing revenue bonds or other obligations under this chapter, the issuer of the bonds or other obligations [authority] is considered to be acting on behalf of the [any] city by which it was created.

(c) Bonds or other obligations issued under Subsection (a) [(b) The bonds] shall be payable from and secured by a pledge of the revenues, income, [all or any part of the gross or net revenue to be derived from the operation of the facility or facilities and any other revenue] or assets pledged for the purpose by the borrower. The bonds

or other obligations may be additionally secured by a mortgage, ~~or~~ deed of trust, ~~on real property of the authority~~ or ~~by a~~ chattel mortgage on real or ~~its~~ personal property, or on ~~by~~ both real and personal property, if granted by the borrower.

(d) A facility financed with the proceeds of a loan or loans made to a borrower under Subsection (a) is not required to be located within the corporate limits of the city that created the issuer of the bonds or other obligations.

(e) An authority or a nonprofit instrumentality that is authorized to acquire and own educational facilities and housing facilities under Section 53.33(a) may issue and execute revenue bonds and other obligations for the purpose of acquiring, owning, and operating the educational and housing facilities, to create operating reserves for the facilities, and to create debt service reserves for and to pay issuance costs related to the bonds or other obligations.

(f) Bonds or other obligations issued under Subsection (e) shall be payable from and secured by a pledge of all or any part of the gross or net revenues to be derived from the operation of the educational facilities and housing facilities being acquired and any other revenues, income, or assets, including the revenues and income of the educational facilities or housing facilities previously acquired or subsequently to be acquired. The bonds or other obligations may be additionally secured by a mortgage, deed of trust, or chattel mortgage on real or personal property, or on both real and personal property, if granted by the authority or nonprofit instrumentality issuing the bonds or other obligations.

(g) The changes in law made by the amendment of this section by the 78th Legislature at the 2003 Regular Session affect and apply only to transactions involving bonds or other obligations that are issued or executed under this chapter on or after March 15, 2003. Bonds or other obligations that are issued or executed under this chapter before March 15, 2003, are governed by the law in effect immediately before the amendment of this section by the 78th Legislature at the 2003 Regular Session, and that former law is continued in effect for that purpose.

SECTION \_\_\_\_\_. Section 53.35(b), Education Code, is amended to read as follows:

(b) In addition to or in lieu of establishing an authority under the provisions of this chapter, the governing body of a city or cities may request or order created one or more nonprofit corporations to act on its behalf and as its duly constituted authority and instrumentality to exercise the powers granted to an authority under the provisions of Sections ~~Section~~ 53.33 and 53.34~~, Texas Education Code~~. If a nonprofit corporation is created for such purposes or agrees to such request, the directors thereof shall thereafter be appointed and be subject to removal by the governing body of the city or cities. In addition to the powers ~~[of lease or acquisition of facilities]~~ granted under, and subject to the limitations provided by, Sections ~~Section~~ 53.33 and 53.34, the corporation shall have all powers granted under the Texas Non-Profit Corporation Act for the purpose of aiding institutions of higher education in providing educational facilities and housing facilities and facilities incidental, subordinate, or related thereto or appropriate in connection therewith. In addition to Sections ~~the provisions of Section~~ 53.33 and 53.34 and the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01, Vernon's Texas Civil

Statutes), Sections 53.131, 53.14, 53.15, 53.31, 53.32, 53.331, 53.34, 53.35, 53.38, and 53.41 of this code~~[, Texas Education Code, shall]~~ apply to and govern such corporation and its procedures, ~~and~~ bonds, and other obligations.

SECTION \_\_\_\_\_. Section 53.48, Education Code, is amended to read as follows:

Sec. 53.48. BONDS FOR ACCREDITED PRIMARY OR SECONDARY SCHOOLS. In the same manner that a corporation may issue and execute bonds or other obligations under this chapter for an institution of higher education, a corporation created under Section 53.35(b) may issue and execute bonds or other obligations to finance or refinance educational facilities or housing facilities to be used by an accredited primary or secondary school or by an authorized charter school.

The floor amendment was read.

On motion of Senator Ogden, Floor Amendment No. 10 was withdrawn.

Senator Gallegos offered the following amendment to the bill:

### Floor Amendment No. 11

Amend **CSHB 3459** (Senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 2, Article 3.50-8, Insurance Code is amended by adding Subsection (a-1) to read as follows:

(a-1) Notwithstanding any other provision of this article or other law, on or after September 1, 2005, each year, the trustee shall deliver to each school district, including a school district that is ineligible for state aid under Chapter 42, Education Code, each other educational district that is a member of the Teacher Retirement System of Texas, each participating charter school, and each regional education service center state funds in an amount, as determined by the trustee, equal to the product of the number of active employees employed by the district, school, or service center multiplied by \$1,000 or a greater amount as provided by the General Appropriations Act for purposes of this article.

SECTION \_\_\_\_\_. In the event of a conflict between a provision of Article 1 of this bill and another Act passed by the 78th Legislature, Regular Session, 2003, that becomes law, Article 1 prevails and controls, regardless of the relative dates of enactment.

The floor amendment was read and was adopted by the following vote: Yeas 20, Nays 10.

Yeas: Barrientos, Brimer, Ellis, Estes, Gallegos, Harris, Hinojosa, Lindsay, Lucio, Madla, Nelson, Ratliff, Shapleigh, Staples, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Armbrister, Averitt, Bivins, Carona, Deuell, Duncan, Fraser, Jackson, Ogden, Shapiro.

Absent: Janek.

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

**CSHB 3459** as amended was passed to third reading by a viva voce vote.

**(Senator Armbrister in Chair)**

**COMMITTEE SUBSTITUTE**

**HOUSE BILL 3459 ON THIRD READING**

Senator Bivins moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3459** be placed on its third reading and final passage.

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

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

Nays: Barrientos, Staples.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2. (Same as previous roll call)

**COMMITTEE SUBSTITUTE**

**HOUSE BILL 2075 ON SECOND READING**

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2075** at this time on its second reading:

**CSHB 2075**, Relating to regulating health and safety conditions at youth camps.

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

**COMMITTEE SUBSTITUTE**

**HOUSE BILL 2075 ON THIRD READING**

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2075** 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 3306 ON SECOND READING**

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3306** at this time on its second reading:

**CSHB 3306**, Relating to certain appropriations made in support of the courts by the legislature to certain individuals and governmental entities, to the assignment of certain visiting judges, and to the Eighth, Ninth, and Eleventh courts of appeals districts.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 3306** (committee printing) as follows:

(1) Strike SECTION 8 of the bill (page 2, lines 6 through 10) and substitute the following appropriately numbered SECTION:

SECTION \_\_\_\_\_. Section 74.003, Government Code, is amended by amending Subsection (b) and adding Subsections (f), (g), and (h) to read as follows:

(b) The chief justice of the supreme court may assign a qualified retired justice or judge of the supreme court, of the court of criminal appeals, or of a court of appeals to a court of appeals for active service regardless of whether a vacancy exists in the court to which the justice is assigned. To be eligible for assignment under this subsection, a retired justice or judge must:

(1) have served as an active justice or judge for at least 96 months in a district, statutory probate, statutory county, or appellate court, with at least 48 of those months in an appellate court;

(2) not have been removed from office;

(3) certify under oath to the chief justice of the supreme court, on a form prescribed by the chief justice, that:

(A) the justice or judge has never been publicly reprimanded or censured by the State Commission on Judicial Conduct; and

(B) the justice or judge:

(i) did not resign or retire from office after the State Commission on Judicial Conduct notified the justice or judge of the commencement of a full investigation into an allegation or appearance of misconduct or disability of the justice or judge as provided in Section 33.022 and before the final disposition of that investigation; or

(ii) if the justice or judge did resign from office under circumstances described by Subparagraph (i), the justice or judge was not publicly reprimanded or censured as a result of the investigation;

(4) annually demonstrate that the justice or judge has completed in the past state fiscal year the educational requirements for active appellate court justices or judges; and

(5) certify to the chief justice of the supreme court a willingness not to appear and plead as an attorney in any court in this state for a period of two years.

(f) For the purposes of Subsection (b)(1), a month of service is calculated as a calendar month or a portion of a calendar month in which a justice or judge was authorized by election or appointment to preside.

(g) Subsection (b)(1) does not apply to a retired justice of the supreme court.

(h) Notwithstanding any other provision of law, an active district court judge may be assigned to hear a matter pending in an appellate court.

(2) Add the following appropriately numbered SECTIONS and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Section 74.041, Government Code, is amended by adding Subdivisions (4)-(7) to read as follows:

(4) "Active judge" means a person who is a current judicial officeholder.

(5) "Former judge" means a person who has served as an active judge in a district, statutory probate, statutory county, or appellate court, but who is not a retired judge.

(6) "Retired judge" means:

(A) a retiree; or

(B) a person who served as an active judge for at least 96 months in a statutory probate or statutory county court and has retired under the Texas County and District Retirement System.

(7) "Senior judge" means a retiree who has elected to be a judicial officer under Section 75.001.

SECTION \_\_\_\_ . Section 74.053, Government Code, is amended to read as follows:

Sec. 74.053. OBJECTION TO [~~ASSIGNED~~] JUDGE ASSIGNED TO A TRIAL COURT. (a) When a judge is assigned to a trial court under this chapter:

(1) the order of assignment must state whether the judge is an active, former, retired, or senior judge; and

(2) the presiding judge shall, if it is reasonable and practicable and if time permits, give notice of the assignment to each attorney representing a party to the case that is to be heard in whole or part by the assigned judge.

(b) If a party to a civil case files a timely objection to the assignment, the judge shall not hear the case. Except as provided by Subsection (d), each party to the case is only entitled to one objection under this section for that case.

(c) An objection under this section must be filed not later than the seventh day after the date the party receives actual notice of the assignment or before the date the first hearing or trial, including pretrial hearings, commences, whichever date occurs earlier. The presiding judge may extend the time to file an objection under this section on written motion by a party who demonstrates good cause [over which the assigned judge is to preside].

(d) An assigned [~~A former~~] judge or justice who was defeated in the last primary or general election for which the judge or justice was a candidate for the judicial office held by the judge or justice [not a retired judge] may not sit in a case if either party objects to the judge or justice.

(e) An active judge assigned under this chapter is not subject to an objection.

(f) For purposes of this section, notice of an assignment may be given and an objection to an assignment may be filed by electronic mail.

(g) In this section, "party" includes multiple parties aligned in a case as determined by the presiding judge.

SECTION \_\_\_\_\_. Sections 74.054(a) and (b), Government Code, are amended to read as follows:

(a) Except as provided by Subsections (b) and (c), the following judges may be assigned as provided by this chapter by the presiding judge of the administrative region in which the assigned judge resides:

(1) an active [~~a regular~~] district, constitutional county, or statutory county court judge in this state;

(2) a senior judge [~~a district or appellate judge who is a retiree under Subtitle D or E of Title 8,~~] who has consented to be subject to assignment[~~;~~] and who is on the list maintained by the presiding judge under this chapter;

(3) a former district or appellate judge, retired or former statutory probate court judge, or retired or former statutory county court judge who certifies to the presiding judge a willingness to serve and who is on the list maintained by the presiding judge as required by this chapter;

(4) a retiree or a former judge whose last judicial office before retirement was justice or judge of the supreme court, the court of criminal appeals, or a court of appeals and who has been assigned by the chief justice to the administrative judicial region in which the retiree or former judge resides for reassignment by the presiding judge of that region to a district or statutory county court in the region; and

(5) an active judge or justice of the supreme court, the court of criminal appeals, or a court of appeals who has had trial court experience.

(b) An active [~~A regular~~] statutory county court judge may not be assigned to hear a matter pending in a district court outside the county of the judge's residence.

SECTION \_\_\_\_\_. Section 74.055, Government Code, is amended by amending Subsections (c) and (e) and adding Subsections (f) and (g) to read as follows:

(c) To be eligible to be named on the list, a retired or former judge must:

(1) have served as an active [~~a~~] judge for at least 96 [~~48~~] months in a district, statutory probate, statutory county, or appellate court;

(2) have developed substantial experience in the judge's area of specialty;

(3) not have been removed from office;

(4) certify under oath to the presiding judge, on a form prescribed by the state board of regional judges, that:

(A) the judge has never been publicly reprimanded or censured by the State Commission on Judicial Conduct; and

(B) the judge:

(i) did not resign or retire from office after [having received notice that formal proceedings by] the State Commission on Judicial Conduct notified the judge of the commencement of a full investigation into an allegation or appearance of misconduct or disability of the judge [had been instituted] as provided in Section 33.022 and before the final disposition of that investigation; or

(ii) if the judge did resign from office under circumstances described by Subparagraph (i), was not publicly reprimanded or censured as a result of the investigation [the proceedings];

(5) annually demonstrate that the judge has completed in the past state fiscal ~~calendar~~ year the educational requirements for active district, statutory probate, and statutory county court judges; and

(6) certify to the presiding judge a willingness not to appear and plead as an attorney in any court in this state for a period of two years.

(e) For purposes of Subsection (c)(1), a month of service is calculated as a calendar month or a portion of a calendar month in which a judge was authorized by election or appointment ~~[by the governor]~~ to preside.

(f) A former or retired judge is ineligible to be named on the list if the former or retired judge is identified in a public statement issued by the State Commission on Judicial Conduct as having resigned or retired from office in lieu of discipline.

(g) A former or retired judge named on the list shall immediately notify the presiding judge of a full investigation by the State Commission on Judicial Conduct into an allegation or appearance of misconduct or disability by the judge. A judge who does not notify the presiding judge of an investigation as required by this subsection is ineligible to remain on the list.

(3) Strike SECTION 9 of the bill (page 2, lines 11 through 34), and substitute the following appropriately numbered SECTION:

SECTION \_\_\_\_\_. Section 74.061, Government Code, is amended by amending Subsections (c) and (d) and adding Subsections (j) and (k) to read as follows:

(c) The salary of a retired judge or justice while assigned under this chapter shall be paid out of money appropriated from the general revenue fund for that purpose in an amount equal to the compensation received from state and county sources of the judge of the court to which he is assigned. The salary of a retired judge or justice while assigned shall be determined pro rata for the period of time that the judge or justice actually sits as the assigned judge. The salary of a retired statutory county court judge assigned under this chapter to serve in a district court ~~[or statutory county court]~~ shall be paid by the state in the same manner as the salary of a retired district judge assigned under this chapter to serve in a district court ~~[or statutory county court]~~ is paid by the state.

(d) For services actually performed while assigned under this chapter, a retired or former judge or justice shall receive from county funds and money appropriated by the legislature the same amount of salary, compensation, and expenses that the regular judge is entitled to receive from the county and from the state for those services. The presiding judge of the administrative region shall certify to the county and the state the services rendered under this chapter by a retired or former judge or justice and the share to be paid by the state. The amount certified by the presiding judge as the state's share shall be paid from an item in the Judicial Section—Comptroller's Department of the General Appropriations Act for the payment of salaries of district and criminal district judges.

(j) A judge or justice who sits as an assigned judge for half a day or less shall be compensated in an amount that is equal to one-half of the amount to which a judge or justice is entitled for sitting as an assigned judge for a full day under this section.

(k) Notwithstanding any other provision of law, a former, retired, or active judge is not entitled to compensation paid by the state when the judge sits as an assigned judge for a statutory county court.

(4) Add the following appropriately numbered SECTIONS and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 75.551, Government Code, is amended to read as follows:

Sec. 75.551. OBJECTION TO JUDGE OR JUSTICE ASSIGNED TO AN APPELLATE COURT. (a) When a judge or justice is assigned to an appellate court under this chapter or Chapter 74:

(1) the order of assignment must state whether the judge or justice is an active, former, retired, or senior judge or justice; and

(2) [;] the person who assigns the judge or justice shall, if it is reasonable and practicable and if time permits, give notice of the assignment to each attorney representing a party to the case that is to be heard in whole or part by the assigned judge or justice.

(b) A judge or justice assigned to an appellate court may not hear a civil case if a party to the case files a timely objection to the assignment of the judge or justice. Except as provided by Subsection (d), [;]

~~[(+)] each party to the case is entitled to only one objection under this section for that case in the appellate court [; and~~

~~[(2) a party to an appeal may not in the same case object in an appellate court to the assignment of a judge or justice under Section 74.053(b) and under this subsection].~~

(c) An objection under this section must be filed not later than the seventh day after the date the party receives actual notice of the assignment or before the date the case is submitted to the court, whichever date occurs earlier. The court may extend the time to file an objection under this section on a showing of good cause [first hearing in which the assigned judge or justice is assigned to sit].

(d) A ~~[former]~~ judge or justice who was defeated in the last primary or general election for which the judge or justice was a candidate for the judicial office held by the judge or justice ~~[not a retired judge or justice]~~ may not sit in an appellate case if either party objects to the judge or justice.

(e) An active judge or justice assigned under this chapter is not subject to an objection.

(f) For purposes of this section, notice of an assignment may be given and an objection to an assignment may be filed by electronic mail.

(g) In this section, "party" includes multiple parties aligned in a case as determined by the appellate court.

SECTION \_\_\_\_\_. Section 74.055(d), Government Code, is repealed.

SECTION \_\_\_\_\_. (a) The change in law made by this Act to Sections 74.053 and 75.551, Government Code, applies only to a case that is pending or commences on or after the effective date of this Act.

(b) Except as provided by Subsection (c) of this section, the change in law made by this Act to Sections 74.003, 74.054, and 74.055, Government Code, applies only to the assignment of a judge or justice under Chapter 74 or 75, Government Code, made on or after the effective date of this Act. An assignment made before the effective date of this Act is governed by the law in effect at the time the assignment is made, and that law is continued in effect for that purpose.

(c) The change in law made by this Act to Sections 74.003, 74.054, and 74.055, Government Code, does not apply to a person who immediately before the effective date of this Act meets the eligibility requirements to be assigned by the chief justice of the supreme court under Section 74.003(b) or Chapter 75, Government Code, or to be named on a list of retired and former judges under Section 74.055(c), Government Code, other than the certification requirement under Section 74.055(c)(6), Government Code, and the former law is continued in effect for determining that person's eligibility for those purposes.

The floor amendment was read and was adopted without objection.

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

**CSHB 3306** as amended was passed to third reading by a viva voce vote.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 3306 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3306** be placed on its third reading and final passage.

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

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### **HOUSE BILL 2554 ON SECOND READING**

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2554** at this time on its second reading:

**HB 2554**, Relating to the application of new requirements for commercial nonhazardous industrial solid waste landfill facilities to be adopted by the Texas Commission on Environmental Quality.

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

#### **HOUSE BILL 2554 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 2554** be placed on its third reading and final passage.

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

Nays: Zaffirini.

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

**HOUSE BILL 2892 ON SECOND READING**

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2892** at this time on its second reading:

**HB 2892**, Relating to the illegal use of money or property derived from or intended to further certain controlled substance offenses; providing penalties.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2892** by adding the following appropriately numbered new sections:

SECTION \_\_\_\_\_. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Section 481.141 to read as follows:

Sec. 481.141. MANUFACTURE OR DELIVERY OF CONTROLLED SUBSTANCE CAUSING DEATH OR SERIOUS BODILY INJURY. (a) If at the guilt or innocence phase of the trial of an offense described by Subsection (b), the judge or jury, whichever is the trier of fact, determines beyond a reasonable doubt that a person died or suffered serious bodily injury as a result of injecting, ingesting, inhaling, or introducing into the person's body any amount of the controlled substance manufactured or delivered by the defendant, regardless of whether the controlled substance was used by itself or with another substance, including a drug, adulterant, or dilutant, the punishment for the offense is increased by one degree.

(b) This section applies to an offense otherwise punishable as a state jail felony, felony of the third degree, or felony of the second degree under Section 481.112, 481.1121, 481.113, 481.114, or 481.122.

(c) Notwithstanding Article 42.08, Code of Criminal Procedure, if punishment for a defendant is increased under this section, the court may not order the sentence for the offense to run concurrently with any other sentence the court imposes on the defendant.

SECTION \_\_\_\_\_. The change in law made by this Act 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 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 the effective date of this Act if any element of the offense occurred before that date.

The floor amendment was read and was adopted without objection.

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

**HB 2892** as amended was passed to third reading by a viva voce vote.

**HOUSE BILL 2892 ON THIRD READING**

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2892** 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 2292 ON SECOND READING**

Senator Nelson moved to suspend the regular order of business to take up for consideration **CSHB 2292** at this time on its second reading:

**CSHB 2292**, Relating to the provision of health and human services in this state, including the powers and duties of the Health and Human Services Commission and other state agencies; providing penalties.

The motion prevailed by the following vote: Yeas 21, Nays 10.

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

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

The bill was read second time.

Senator Nelson offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2292** as follows:

In Section 2.72 adding Section 533.0354(a), Health and Safety Code, strike "provide" and substitute "ensure provision of" (Senate committee printing, page 65, line 51), and strike "engage an individual" and substitute "ensure that individuals are engaged" (Senate committee printing, page 65, line 56).

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. 2**

Amend **CSHB 2292** as follows:

(1) In SECTION 2.94, strike added subsection (g) of Section 32.026(g), Human Resources Code (Senate committee printing, page 77, lines 46-51).

(2) Amend the introductory language to SECTION 2.93 to read as follows:

"Section 32.025, Human Resources Code, is amended by amending Subsection (e) and adding Subsection (g) to read as follows:"

(3) In SECTION 2.93, insert the following new language immediately before SECTION 2.94 (Senate committee printing, page 77, between lines 29 and 30):



(g) the department shall require applicants for medical assistance for long term care programs to apply for and obtain Veteran's Administration benefits and services for which they are entitled.

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

**(President in Chair)**

Senator Nelson offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **CSHB 2292** as follows:

In SECTION 1.13 of the committee substitute, strike added Section 117.071, Human Resources Code (Senate committee printing, page 19, lines 25-30) and substitute the following:

Sec. 117.071. GENERAL POWERS AND DUTIES OF THE DEPARTMENT. The department is responsible for administering human services programs to provide early childhood intervention services and rehabilitation and related services to persons who are blind, deaf, or hard of hearing. The department is also responsible for providing and coordinating programs for the rehabilitation of persons with disabilities so that they may prepare for and engage in a gainful occupation or achieve maximum personal independence.

In the portion of SECTION 2.97 that adds Section 32.028(i)(3), Human Resources Code (Senate committee printing, page 78, line 32), strike "participation" and substitute "not participating".

In SECTION 2.30 (Senate committee printing, page 48, lines 58-59), strike subdivision (2) of Section 403.105(c), Government Code and substitute the following:

(2) the provision of preventive medical and dental services to children in the medical assistance program under Chapter 32, Human Resources Code.

Insert the following new SECTION, appropriately numbered, and renumber subsequent sections accordingly:

SECTION \_\_\_\_ . Section 403.1066, Government Code, is amended to read as follows:

Sec. 403.1066. PERMANENT HOSPITAL FUND FOR CAPITAL IMPROVEMENTS AND THE TEXAS CENTER FOR INFECTIOUS DISEASE [COMMUNITY HOSPITAL CAPITAL IMPROVEMENT FUND].

(a) The permanent hospital [community hospital capital improvement] fund for capital improvements and the Texas Center for Infectious Disease is a dedicated account in the general revenue fund. The fund is composed of:

- (1) money transferred to the fund at the direction of the legislature;
- (2) payments of interest and principal on loans and fees collected under this section;
- (3) gifts and grants contributed to the fund; and
- (4) the available earnings of the fund determined in accordance with Section 403.1068.

(b) Except as provided by Subsections (c), (d), (e), and (i), the money in the fund may not be appropriated for any purpose.

(c) The available earnings of the fund may be appropriated to the Texas Department of Health for the purpose of providing services at the Texas Center for Infectious Disease and for grants, loans, or loan guarantees to public or nonprofit community hospitals with 125 beds or fewer located in an urban area of the state.

(d) The comptroller may solicit and accept gifts and grants to the fund. A gift or grant to the fund may be appropriated in the same manner as available earnings of the fund, subject to any limitation or requirement placed on the gift or grant by the donor or granting entity.

(e) Money in the fund may also be appropriated to pay any amount of money that the federal government determines that the state should repay to the federal government or that the federal government should recoup from the state in the event of national legislation regarding the subject matter of the case styled *The State of Texas v. The American Tobacco Co., et al.*, No. 5-96CV-91, in the United States District Court, Eastern District of Texas.

(f) The Texas Board of Health may adopt rules governing any grant, loan, or loan guarantee program established under this section.

(g) A hospital eligible to receive a grant, loan, or loan guarantee under Subchapter G, Chapter 106, Health and Safety Code, is not eligible to receive a grant, loan, or loan guarantee under this section.

(h) Sections 403.095 and 404.071 do not apply to the fund.

(i) The department may direct the comptroller to temporarily transfer money appropriated under Subsection (c) to pay an obligation that the department is authorized to incur under and for which money is appropriated under Section 403.105(c), 403.1055(c), or 403.106(c) if the department determines that the transfer is necessary for cash management purposes. As soon as possible after the transfer but not later than the 90th day after the date of the transfer, the department shall direct the comptroller to transfer back the transferred amount from amounts appropriated under Section 403.105(c), 403.1055(c), or 403.106(c), as applicable, to the appropriation item for Subsection (c).

Strike Section 2.33(a) (Senate committee printing, page 49, lines 15-47) and substitute the following:

SECTION 2.33. (a) Effective September 1, 2003, Section 466.408(b), Government Code is amended to read as follows:

(b) If a claim is not made for prize money on or before the 180th day after the date on which the winner was selected, the prize money shall be used in the following order of priority:

(1) \$10 million in prize money each year shall be deposited to and may be appropriated from the Texas Department of Health state-owned multicategorical teaching hospital account, which is an account in the general revenue fund; and

(2) all prize money subject to this section in excess of \$10 million each year shall be deposited in the general revenue fund and may be appropriated for any purpose as determined the legislature, including purposes specified in Chapter 61, Health and Safety Code [~~shall be deposited to the credit of the Texas Department of Health state-owned multicategorical teaching hospital account or the tertiary care facility account as follows:~~

~~[(1) not more than \$40 million in prize money each biennium may be deposited to or appropriated from the Texas Department of Health state owned multicategorical teaching hospital account, which is an account in the general revenue fund; and~~

~~[(2) all prize money subject to this section in excess of \$40 million each biennium shall be deposited in the tertiary care facility account. Money deposited in the tertiary care facility account may only be appropriated to the department for purposes specified in Chapter 46 or 61, Health and Safety Code].~~

Strike Sections 2.43 and 2.44 (Senate committee printing, page 52, line 59 through page 53, line 24) and substitute the following:

SECTION 2.43. Section 62.002(4), Health & Safety Code, is amended to read as follows:

(4) "Gross ~~[Net]~~ family income" means the total amount of income established for a family without consideration of any reduction for offsets ~~[after reduction for offsets for expenses such as child care and work related expenses, in accordance with standards applicable under the Medicaid]~~ that may be available to the family under any other program.

SECTION 2.44. Section 62.101(b), Health & Safety Code, is amended to read as follows:

(b) The commission shall establish income eligibility levels consistent with Title XXI, Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations, and subject to the availability of appropriated money, so that a child who is younger than 19 years of age and whose gross ~~[net]~~ family income is at or below 200 percent of the federal poverty level is eligible for health benefits coverage under the program. In addition, the commission may establish eligibility standards regarding the amount and types of allowable assets for a family whose gross family income is above 150 percent of the federal poverty level.

Insert the following new SECTION, appropriately numbered, and renumber subsequent sections accordingly:

SECTION \_\_\_\_\_. (a) Section 31.032(d), Human Resources Code, is amended to read as follows:

(d) In determining whether an applicant is eligible for assistance, the department shall exclude from the applicant's available resources:

(1) \$1,000 ~~[\$2,000]~~ for the applicant's household, including a household in which there is ~~[or \$3,000 if there is]~~ a person with a disability or a person who is at least 60 years of age ~~[in the applicant's household]~~; and

(2) the fair market value of the applicant's ownership interest in a motor vehicle, but not more than the amount determined according to the following schedule:

(A) \$4,550 on or after September 1, 1995, but before October 1, 1995;

(B) \$4,600 on or after October 1, 1995, but before October 1, 1996;

(C) \$5,000 on or after October 1, 1996, but before October 1, 1997;

and

(D) \$5,000 plus or minus an amount to be determined annually beginning on October 1, 1997, to reflect changes in the new car component of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

(b) Section 31.032(d), Human Resources Code, as amended by this section, applies to a person receiving financial assistance on or after the effective date of this Act, regardless of the date on which eligibility for financial assistance was determined.

Insert the following new SECTION, appropriately numbered, and renumber subsequent sections accordingly:

SECTION \_\_\_\_\_. (a) Section 32.024(w), Human Resources Code, is amended to read as follows:

(w) The department shall set a personal needs allowance of not less than \$45 [~~\$60~~] a month for a resident of a convalescent or nursing home or related institution licensed under Chapter 242, Health and Safety Code, personal care facility, ICF-MR facility, or other similar long-term care facility who receives medical assistance. The department may send the personal needs allowance directly to a resident who receives Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.). This subsection does not apply to a resident who is participating in a medical assistance waiver program administered by the department.

(b) Section 32.024(w), Human Resources Code, as amended by this section, applies only to a personal needs allowance paid on or after the effective date of this Act.

(Part 7a) Amend Section 2.93 (Senate committee printing, page 77, line 27) by inserting "only" between "representative" and "if".

(Part 7b) Amend Section 2.94 by striking the portion of the bill amending Subsection (e) of Section 32.026, Human Resources Code (Senate committee printing, page 77, lines 33-45) and substituting the following:

(e) The department shall permit a recertification review of the eligibility and need for medical assistance of a child under 19 years of age to be conducted by telephone or mail instead of through a personal appearance at a department office, unless the department determines that the information needed to verify eligibility cannot be obtained in that manner. The department by rule may develop procedures to determine whether there is a need for a recertification review of a child described by this subsection to be conducted through a personal interview with a department representative. Procedures developed under this subsection shall be based on objective, risk-based factors and conditions and shall focus on a targeted group of recertification reviews for which there is a high probability that eligibility will not be recertified.

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

### RECORD OF VOTES

Senators Janek and Van de Putte asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 3.

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

**CSHB 2292** as amended was passed to third reading by a viva voce vote.

### RECORD OF VOTES

Senators Barrientos, Ellis, Gallegos, Hinojosa, Lucio, Shapleigh, Van de Putte, West, Whitmire, and Zaffirini asked to be recorded as voting "Nay" on the passage of **CSHB 2292** to third reading.

### COMMITTEE SUBSTITUTE HOUSE BILL 2425 ON SECOND READING

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2425** at this time on its second reading:

**CSHB 2425**, Relating to state and certain local fiscal matters; making an appropriation.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

#### Floor Amendment No. 1

**CSHB 2425** is amended as follows:

On page 47, lines 51 and 52, delete the following: "In this subsection, 'place of primary use' has the meaning assigned by Section 151.061(a)(2)."

On page 49, lines 14 and 15, delete the following: "In this subsection, 'place of primary use' has the meaning assigned by Section 151.061(a)(2)."

The floor amendment was read and was adopted without objection.

Senator Duncan offered the following amendment to the bill:

#### Floor Amendment No. 2

Amend **CSHB 2425** (Senate committee printing) as follows:

- (1) Strike SECTION 81 of the bill (page 33, line 60 through page 34, line 16).
- (2) In SECTION 116 of the bill (page 50, lines 30-36), strike Subdivisions (24), (25), (26), (27), (29), and (30), and renumber the remaining Subdivisions accordingly.
- (3) In SECTION 119(f) of the bill (page 52, line 14), strike Subdivision (5) and renumber the remaining Subdivisions accordingly.
- (4) Strike SECTION 119(h) of the bill (page 52, lines 22-31), and substitute the following:
  - (g) The repeal by this Act of the following provisions takes effect October 1, 2003:

- (1) Section 151.326(c), Tax Code; and
- (2) Chapter 326, Tax Code.

The floor amendment was read and was adopted without objection.

Senator Shapleigh offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **CSHB 2425** in SECTION 10, amending Section 403.020, Government Code, by striking amended Subsection (c) (page 8, lines 11 through 17, Senate committee printing) and substituting the following:

(c) A review of a school district may be initiated by the comptroller or by the request of the [school] district. Except as provided by Subsection (c-1), a review of a public junior college or general academic teaching institution may be initiated only at the request of:

(1) the governor;

(2) the Legislative Budget Board; or

(3) the governing body of the college or institution.

(c-1) A review of a general academic teaching institution may be initiated by the comptroller if the rate of graduation within six years of initial enrollment for entering freshman students of the institution for the most recent six-year period for which that information is available is less than 35 percent, as determined by the Texas Higher Education Coordinating Board.

The floor amendment was read and was adopted without objection.

Senator Bivins offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend **CSHB 2425** as follows:

(1) Strike SECTIONS 89-103 of the bill (Senate committee printing, page 37, line 24, through page 45, line 8).

(2) Strike SECTION 119(k) of the bill (Senate committee printing, page 52, lines 44-47).

(3) Renumber SECTIONS of the bill appropriately.

The floor amendment was read and was adopted without objection.

Senator Duncan offered the following amendment to the bill:

**Floor Amendment No. 5**

Amend **CSHB 2425** by deleting SECTION 54 and SECTION 110.

The floor amendment was read and was adopted without objection.

Senator Williams offered the following amendment to the bill:

**Floor Amendment No. 6**

Amend **CSHB 2425** as follows:

(1) Add the following appropriately numbered SECTION and renumber subsequent SECTIONS of the bill appropriately:

SECTION \_\_\_\_ . Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.356 to read as follows:

Sec. 151.356. NONVEHICULAR FUEL CELLS. (a) The sale, use, or other consumption of nonvehicular fuel cells is exempted from the taxes imposed by this chapter.

(b) This section expires January 1, 2011.

(2) In SECTION 119(e) of the bill (Senate Committee Printing, page 52, line 6), between the comma and "as" insert "and Section 151.356, Tax Code,".

The floor amendment was read.

On motion of Senator Williams, Floor Amendment No. 6 was withdrawn.

Senator Barrientos offered the following amendment to the bill:

### **Floor Amendment No. 7**

Amend **CSHB 2425** by adding appropriately numbered new SECTIONS to the bill and renumbering subsequent SECTIONS accordingly, to read as follows:

(1) SECTION \_\_\_\_\_. Section 659.260, Government Code, is amended to read as follows:

Sec. 659.260. TEMPORARY ASSIGNMENT. [~~(a) This section applies only to an employee whose permanent position is classified under the state's position classification plan.~~]

(a) [(b)] To facilitate a state agency's work during an emergency or other special circumstance, an employee may be temporarily assigned to other duties for a period not to exceed six months. The employee is entitled to receive during the period of reassignment at least the same rate of pay that the employee received immediately before the reassignment. An employee may not be temporarily assigned under this subsection to a position classified in a salary group with a lower minimum salary rate.

(b) [(c)] An employee may not be assigned temporary duties under this section for more than six months during a twelve-month period.

(c) [(d)] An employee temporarily designated to act as the administrative head of a state agency may continue to receive a salary for a classified position in an amount not to exceed the amount established by General Appropriations Act for the administrative head of the agency.

(d) [(e)] While the employee is temporarily assigned under this section, the state agency may not:

- (1) award a merit salary increase to the employee; or
- (2) promote or demote the employee.

(2) SECTION \_\_\_\_\_. Subsection (e), Section 661.152, Government Code, is amended to read as follows:

(e) In this subsection, "duty" means an employee's last physical day on the job. An employee accrues vacation leave at the applicable rate beginning on the first day of state employment and ending on the last duty day of state employment. An employee accrues and is entitled to be credited for one month's vacation leave for each month of employment with the state beginning on the first day of employment with the state and on the first calendar day of each succeeding month of state employment. An employee who is employed by the state during any part of a calendar month accrues vacation leave entitlement for the entire calendar month.

(3) SECTION \_\_\_\_\_. Subsection (b), Section 661.202, Government Code, is amended to read as follows:

(b) In this subsection, "duty" means an employee's last physical day on the job. An employee accrues sick leave beginning on the first day of state employment and ending on the last duty day of state employment. An employee is entitled to be

credited for one month's accrual of sick leave at the rate specified by Subsection (c) for each month of employment with the state beginning on the first day of employment with the state and on the first calendar day of each succeeding month of state employment.

(4) SECTION \_\_\_\_\_. Subsection (b), Section 661.206, Government Code, is amended to read as follows:

(b) An employee may use up to eight hours of sick leave each fiscal ~~calendar~~ year to attend parent-teacher conference sessions for the employee's children.

(5) SECTION \_\_\_\_\_. Section 662.010, Government Code, is amended to read as follows:

Sec. 662.010. HOLIDAY BEFORE WORK BEGINS OR AFTER WORK ENDS. (a) An individual must be a state employee on the workday before and after a state or national holiday in order to be paid for that holiday, unless the holiday falls on the employee's first or last workday of the month ~~[who is not a state employee on the last workday before a state or national holiday but who is a state employee on the first workday after the holiday may not be paid for the holiday if it occurs during the same month as the last workday before the holiday.]~~

~~[(b) An individual who is a state employee on the last workday before a state or national holiday but who is not a state employee on the first workday after the holiday may not be paid for the holiday if it occurs before the first workday of a month and during that month].~~

(b) ~~[(e)]~~ In this section, "state employee":

- (1) includes an individual who uses paid leave from a state agency; and
- (2) does not include an individual who uses unpaid leave from a state agency.

The floor amendment was read and was adopted without objection.

Senator Deuell offered the following amendment to the bill:

### **Floor Amendment No. 8**

Amend **CSHB 2425** by adding the following appropriately numbered SECTION to the bill and renumbering the other SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 55.1731(a), Education Code, is amended to read as follows:

(a) In addition to the other authority granted by this subchapter, the board of regents of The Texas A&M University System may issue in accordance with this subchapter and in accordance with a systemwide revenue financing program adopted by the board bonds for the following institutions not to exceed the following aggregate principal amounts to finance projects specified as follows:

- (1) Prairie View A&M University:
  - (A) \$53 million to construct or renovate engineering facilities, construct and renovate an architecture building, and carry out other campus renovations; and
  - (B) \$15 million to construct a juvenile justice and psychology building;
- (2) Tarleton State University, \$18.7 million for a library addition and renovation of a mathematics building;
- (3) Texas A&M University–Commerce, \$14,960,000 to construct ~~[replace]~~ a science building ~~[wing]~~;



(4) Texas A&M University–Corpus Christi, \$34 million to construct a classroom and laboratory facility and for construction of the Harte Research Center;

(5) Texas A&M International University, \$21,620,000 to construct a science building (Phase IV);

(6) Texas A&M University at Galveston, \$10,030,000 to construct an engineering building;

(7) Texas A&M University–Kingsville, \$20,060,000 to construct facilities for a pharmacy school and to construct a student services building;

(8) Texas A&M University–Texarkana, \$17 million to construct a health science building and for library renovation;

(9) West Texas A&M University, \$22,780,000 to construct a fine arts complex; and

(10) The Texas A&M University Health Science Center, \$14.3 million for construction of classroom and faculty office facilities for the School of Rural Public Health.

The floor amendment was read and was adopted without objection.

Senator Averitt offered the following amendment to the bill:

#### **Floor Amendment No. 9**

Amend **CSHB 2425** by inserting the following new SECTIONS, appropriately numbered, and renumbering the SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Articles 4.51(2) and (13), Insurance Code, are amended to read as follows:

(2) "Allocation date" means the date on which the certified investors of a certified capital company are allocated premium tax credits [~~certified capital~~] by the comptroller under this subchapter.

(13) "State premium tax liability" means:

(A) any liability incurred by any person under Subchapter A of this chapter; or

(B) if the tax liability imposed under Subchapter A of this chapter on January 1, 2003 [~~2001~~], is eliminated or reduced, any tax liability imposed on an insurance company or other person that had premium tax liability under Subchapter A of this chapter on that date.

SECTION \_\_\_\_\_. Article 4.52, Insurance Code, is amended to read as follows:

Art. 4.52. **DUTIES OF COMPTROLLER; RULES; IMPLEMENTATION.** The comptroller shall administer this subchapter and shall [~~may~~] adopt rules and forms as necessary to implement this subchapter. The rules must provide that:

(1) the comptroller shall begin accepting applications for certification as a certified capital company not later than the 30th day after the date the rules are adopted; and

(2) the comptroller shall accept premium tax credit allocation claims on behalf of certified investors on a date not later than the 120th day after the date the rules are adopted.

SECTION \_\_\_\_\_. Article 4.65(a), Insurance Code, is amended to read as follows:

(a) A certified investor who makes an investment of certified capital shall in the year of investment earn a vested credit against state premium tax liability equal to 100 percent of the certified investor's investment of certified capital, subject to the limits imposed by this subchapter. Beginning with the tax report due March 1, 2009, for the 2008 tax year, a [A] certified investor may take up to 25 [40] percent of the vested premium tax credit in any taxable year of the certified investor. The credit may not be applied to estimated payments due in 2008.

SECTION \_\_\_\_\_. Article 4.66(a), Insurance Code, is amended to read as follows:

(a) A premium tax credit allocation claim must be prepared and executed by a certified investor on a form provided by the comptroller. The certified capital company must file the claim with the comptroller on the date on which the comptroller accepts premium tax credit allocation claims on behalf of certified investors under rules adopted under Article 4.52(2) of this code [not later than February 15, 2002]. The premium tax credit allocation claim form must include an affidavit of the certified investor under which the certified investor becomes legally bound and irrevocably committed to make an investment of certified capital in a certified capital company in the amount allocated even if the amount allocated is less than the amount of the claim, subject only to the receipt of an allocation under Article 4.68 of this code.

SECTION \_\_\_\_\_. Section 4.67(b), Insurance Code, is amended to read as follows:

(b) The total amount of certified capital for which premium tax credits may be allowed for all certified investors under this subchapter may not exceed the amount that would entitle all certified investors in certified capital companies to take total credits of \$50 [\$20] million in a year.

SECTION \_\_\_\_\_. Article 4.68(c), Insurance Code, is amended to read as follows:

(c) Not later than the 15th day after the date on which the comptroller accepts premium tax credit allocation claims on behalf of certified investors under rules adopted under Article 4.52(2) of this code [March 1, 2002], the comptroller shall notify each certified capital company of the amount of tax credits allocated to each certified investor. Each certified capital company shall notify each certified investor of their premium tax credit allocation.

SECTION \_\_\_\_\_. Article 4.73(a), Insurance Code, is amended to read as follows:

(a) The comptroller shall prepare a biennial report with respect to results of the implementation of this subchapter. The report must include:

- (1) the number of certified capital companies holding certified capital;
- (2) the amount of certified capital invested in each certified capital company;
- (3) the amount of certified capital the certified capital company has invested in qualified businesses as of January 1, 2006 [2004], and the cumulative total for each subsequent year;
- (4) the total amount of tax credits granted under this subchapter for each year that credits have been granted;
- (5) the performance of each certified capital company with respect to renewal and reporting requirements imposed under this subchapter;

(6) with respect to the qualified businesses in which certified capital companies have invested:

(A) the classification of the qualified businesses according to the industrial sector and the size of the business;

(B) the total number of jobs created by the investment and the average wages paid for the jobs; and

(C) the total number of jobs retained as a result of the investment and the average wages paid for the jobs; and

(7) the certified capital companies that have been decertified or that have failed to renew the certification and the reason for any decertification.

The floor amendment was read and was adopted without objection.

Senator Gallegos offered the following amendment to the bill:

### **Floor Amendment No. 10**

Amend **CSHB 2425** by adding a new SECTION 62 on page 29, line 29 and renumbering subsequent sections:

SECTION 62. Section 430.003, Local Government Code, is added to read as follows:

Section 430.003. Exemptions of State Property from Infrastructure Fees. No county, municipality or utility district may collect from a state agency or public institution of higher education any fee charged for the development or maintenance of programs or facilities for the control of excess water or storm water.

The floor amendment was read and was adopted without objection.

Senator Ogden offered the following amendment to the bill:

### **Floor Amendment No. 11**

Amend **CSHB 2425** by adding the following appropriately numbered SECTIONS and renumbering the other SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 53.02, Education Code, is amended by adding Subdivision (14) to read as follows:

(14) "Borrower" means any of the following entities that is the recipient of a loan made under Section 53.34:

(A) an institution of higher education;

(B) a nonprofit corporation incorporated by and under the exclusive control of an institution of higher education;

(C) an accredited primary or secondary school; or

(D) an accredited charter school.

SECTION \_\_\_\_\_. Section 53.33, Education Code, is amended to read as follows:

Sec. 53.33. LIMITED POWER TO ACQUIRE, OWN, AND OPERATE EDUCATIONAL AND HOUSING FACILITIES[:—CONSTRUCTION, ACQUISITION, ETC]. (a) An [The] authority or a nonprofit instrumentality created under Section 53.35(b) may acquire, own, hold title to, lease, or operate an educational facility or housing facility or any facility incidental, subordinate, or related to or appropriate in connection with an educational facility or housing facility, but only if:

(1) the facility is or will be located within the corporate limits of the city that created the authority or nonprofit instrumentality;

(2) the governing body of an institution of higher education officially requests the authority or nonprofit instrumentality to acquire and own the facility for the benefit of the institution of higher education;

(3) the institution of higher education officially agrees to accept, and has authority to receive legal title to, the facility not later than the date on which any bonds or other obligations issued to acquire the facility are paid in full; and

(4) the ownership of the facility by the authority or the nonprofit instrumentality is approved by official action of the governing body of:

(A) the city that created the authority or nonprofit instrumentality;

(B) the school district in which the facility is or will be located; and

(C) the county in which the facility is or will be located.

(b) An authority or instrumentality that exercises the powers granted by Subsection (a) may contract for the operation of the facility by public or private entities or persons on the terms and conditions set forth in a contract relating to the operation of the facility.

(c) The changes in law made by the amendment of this section by the 78th Legislature at the 2003 Regular Session do not affect the acquisition, ownership, construction, or improvement of a facility, or the acquisition and ownership of land that were approved by official action of the authority or nonprofit corporate instrumentality before March 15, 2003, and the law in effect immediately before the effective date of the amendment of this section by the 78th Legislature at the 2003 Regular Session is continued in effect for that purpose [by purchase, purchase contract, or lease, may construct, or may enlarge, extend, repair, renovate, or otherwise improve educational facilities or housing facilities. It may acquire land for those purposes, furnish and equip the facilities, and provide by contract, lease, or otherwise for the operation and maintenance of the facilities. The facilities need not be located within the city limits of the city or cities].

SECTION \_\_\_\_ . Section 53.34, Education Code, is amended to read as follows:

Sec. 53.34. REVENUE BONDS. (a) An [The] authority or a nonprofit instrumentality created under Section 53.35(b), including an authority or nonprofit instrumentality authorized to own facilities under Section 53.33(a), may issue and execute revenue bonds or other obligations to loan or otherwise provide funds to a borrower if:

(1) the governing body of the borrower by official action requests the issuer of the bonds or other obligations to loan the proceeds under this subsection;

(2) the purpose of the loan is to enable the borrower to acquire, construct, enlarge, extend, repair, renovate, or otherwise improve an educational facility or housing facility or any facility incidental, subordinate, or related to or appropriate in connection with an educational facility or housing facility, or for acquiring land to be used for those purposes, or to create operating and debt service reserves for and to pay issuance costs related to the bonds or other obligations; and

(3) under the terms of the loan, and unless a mortgage lien granted to secure the loan is in default, the ownership of the facility is required to be at all times under the exclusive control, and held for the exclusive benefit, of the borrower [for any of its purposes].

(b) In issuing revenue bonds or other obligations under this chapter, the issuer of the bonds or other obligations [authority] is considered to be acting on behalf of the [any] city by which it was created.

(c) Bonds or other obligations issued under Subsection (a) [~~(b) The bonds~~] shall be payable from and secured by a pledge of the revenues, income, [all or any part of the gross or net revenue to be derived from the operation of the facility or facilities and any other revenue] or assets pledged for the purpose by the borrower. The bonds or other obligations may be additionally secured by a mortgage, ~~or~~ deed of trust, ~~on real property of the authority~~ or [by a] chattel mortgage on real or [its] personal property, or on [by] both real and personal property, if granted by the borrower.

(d) A facility financed with the proceeds of a loan or loans made to a borrower under Subsection (a) is not required to be located within the corporate limits of the city that created the issuer of the bonds or other obligations.

(e) An authority or a nonprofit instrumentality that is authorized to acquire and own educational facilities and housing facilities under Section 53.33(a) may issue and execute revenue bonds and other obligations for the purpose of acquiring, owning, and operating the educational and housing facilities, to create operating reserves for the facilities, and to create debt service reserves for and to pay issuance costs related to the bonds or other obligations.

(f) Bonds or other obligations issued under Subsection (e) shall be payable from and secured by a pledge of all or any part of the gross or net revenues to be derived from the operation of the educational facilities and housing facilities being acquired and any other revenues, income, or assets, including the revenues and income of the educational facilities or housing facilities previously acquired or subsequently to be acquired. The bonds or other obligations may be additionally secured by a mortgage, deed of trust, or chattel mortgage on real or personal property, or on both real and personal property, if granted by the authority or nonprofit instrumentality issuing the bonds or other obligations.

(g) The changes in law made by the amendment of this section by the 78th Legislature at the 2003 Regular Session affect and apply only to transactions involving bonds or other obligations that are issued or executed under this chapter on or after March 15, 2003. Bonds or other obligations that are issued or executed under this chapter before March 15, 2003, are governed by the law in effect immediately before the amendment of this section by the 78th Legislature at the 2003 Regular Session, and that former law is continued in effect for that purpose.

SECTION \_\_\_\_ . Section 53.35(b), Education Code, is amended to read as follows:

(b) In addition to or in lieu of establishing an authority under the provisions of this chapter, the governing body of a city or cities may request or order created one or more nonprofit corporations to act on its behalf and as its duly constituted authority and instrumentality to exercise the powers granted to an authority under the provisions of Sections [Section] 53.33 and 53.34[~~, Texas Education Code~~]. If a

nonprofit corporation is created for such purposes or agrees to such request, the directors thereof shall thereafter be appointed and be subject to removal by the governing body of the city or cities. In addition to the powers ~~[of lease or acquisition of facilities]~~ granted under, and subject to the limitations provided by, Sections ~~[Section]~~ 53.33 and 53.34, the corporation shall have all powers granted under the Texas Non-Profit Corporation Act for the purpose of aiding institutions of higher education in providing educational facilities and housing facilities and facilities incidental, subordinate, or related thereto or appropriate in connection therewith. In addition to Sections ~~[the provisions of Section]~~ 53.33 and 53.34 and the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01, Vernon's Texas Civil Statutes), Sections 53.131, 53.14, 53.15, 53.31, 53.32, 53.331, 53.34, 53.35, 53.38, and 53.41 ~~of this code[, Texas Education Code, shall]~~ apply to and govern such corporation and its procedures, ~~[and] bonds, and other obligations.~~

SECTION \_\_\_\_\_. Section 53.48, Education Code, is amended to read as follows:

Sec. 53.48. BONDS FOR ACCREDITED PRIMARY OR SECONDARY SCHOOLS. In the same manner that a corporation may issue and execute bonds or other obligations under this chapter for an institution of higher education, a corporation created under Section 53.35(b) may issue and execute bonds or other obligations to finance or refinance educational facilities or housing facilities to be used by an accredited primary or secondary school or by an authorized charter school.

The floor amendment was read and was adopted without objection.

Senator Barrientos offered the following amendment to the bill:

### Floor Amendment No. 12

Amend **CSHB 2425** by striking "and P," from Section 116(4) and adding the following new appropriately designated sections to the bill:

SECTION \_\_\_\_: Section 403.401, Government Code is amended to read as follows:

(4) "Office" means the office of the ~~comptroller~~ governor.

SECTION \_\_\_\_: Section 403.403, Government Code, is amended to read as follows:

(d) The governor shall designate ~~comptroller is~~ the presiding officer of the board to serve in that capacity at the pleasure of the governor.

SECTION \_\_\_\_: Section 403.406, Government Code, is amended to read as follows:

(a) The board shall hold regular meetings in Austin and other meetings at places and times scheduled by the board in formal sessions and called by the governor ~~comptroller~~.

SECTION \_\_\_\_: Section 403.413, Government Code, is amended to read as follows:

(b) In determining eligible products and ~~small~~ businesses, the board shall give special preference to products or businesses in the areas of semiconductors, nanotechnology, biotechnology and biomedicine that have the greatest likelihood of commercial success, job creation, and job retention in this state.

(e) The board may appoint an advisory committee of experts in the areas of semiconductors, nanotechnology, biotechnology and biomedicine to review projects and businesses seeking financing from the board.

(h) Any business in this state may be eligible for funding through the small business incubator fund if it is determined to have a substantial likelihood of developing and expanding the opportunities for small businesses in the semiconductor, nanotech, biotech or biomedicine industries in Texas.

SECTION \_\_\_\_: Section 403.408 Government Code, Subsection 403.403(f) Government Code and Subsection 403.413(f) Government Code are repealed.

SECTION \_\_\_\_: Proceeds from bonds issued pursuant to V.T.C.A., Government Code Section 403.410 and deposited in the Product Development Fund are hereby appropriated to the Office of the Governor to be used only for purposes specified in V.T.C.A., Government Code Subchapter P: Product Development and Small Business Incubators and Section 71, Article XVI, Texas Constitution. All funds deposited in the Product Development Fund for debt service payments pursuant to contractual agreements between the Board and eligible entities receiving awards from the fund are hereby appropriated.

The floor amendment was read and was adopted without objection.

Senator Gallegos offered the following amendment to the bill:

### **Floor Amendment No. 13**

Amend **CSHB 2425** by adding the following appropriately numbered SECTIONS to the bill and renumbering existing SECTIONS of the bill appropriately:

SECTION \_\_\_\_: Section 141.008, Local Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The governing body shall make the payroll deduction described by Subsection (a) if requested in writing by employees who are fire protection personnel as defined by Section 419.021, Government Code, if the municipality receives revenue from the State and if the municipality permits deductions for purposes other than charity, health insurance, taxes, or other purposes for which the municipality is required by law to permit a deduction.

The floor amendment was read and was adopted without objection.

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

**CSHB 2425** as amended was passed to third reading without objection.

### **COMMITTEE SUBSTITUTE HOUSE BILL 2425 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2425** 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  
HOUSE BILL 3015 ON SECOND READING**

Senator Shapiro moved to suspend the regular order of business to take up for consideration **CSHB 3015** at this time on its second reading:

**CSHB 3015**, Relating to the tuition and fees charged to students of institutions of higher education, to financial assistance funded by tuition, and to accountability reports by institutions of higher education.

The motion prevailed by the following vote: Yeas 22, Nays 9.

Yeas: Armbrister, Averitt, Bivins, Brimer, Carona, Deuell, Duncan, Estes, Harris, Jackson, Janek, Lindsay, Nelson, Ogden, Ratliff, Shapiro, Shapleigh, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Barrientos, Ellis, Fraser, Gallegos, Hinojosa, Lucio, Madla, Staples, Van de Putte.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 3015** as follows:

(1) On page 1, strike lines 42 through 45 and substitute the following:

"(b) In addition to the amounts authorized by Subsection (a) or other provisions of this chapter, the governing board of an institution higher education may charge a resident undergraduate student an amount designated as tuition. For the 2003-2004 and 2004-2005 academic years, the amount is limited as follows:"

(2) On page 1, between lines 53 and 54, insert the following new subsections:

"(b-2) Notwithstanding Subsection (e), beginning with the 2005-2006 academic year, revenue from any portion of tuition charged under Subsection (b) at a rate in excess of \$46 per semester credit hour is subject to Section 54.004.";

"(b-3) Not later than January 1, 2004, the coordinating board shall adopt performance criteria for each institution of higher education to measure satisfactory progress towards the goals provided in the master plan for higher education and Closing the Gaps by 2015. The performance criteria shall include, but are not limited to, measures such as graduation rates, retention rates, enrollment growth, educational quality, efforts to enhance minority participation, opportunities for financial aid, and an affordability report. The affordability report shall include an analysis of the criteria used by the institution for financial assistance that takes into account the mission of the institution and the purposes of higher education in the state, and that includes a comparison in terms of affordability with peer institutions inside and outside the state. An institution of higher education may not charge tuition under Subsection (b) in excess of \$46 per semester credit hour unless the institution is certified by the coordinating board to have met the performance criteria in the preceding academic year."

The floor amendment was read and was adopted without objection.



Senator West offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 3015** as follows:

(1) Add the following new SECTION to the bill and renumber the subsequent sections appropriately:

SECTION \_\_\_\_ . Subchapter B, Chapter 54, Education Code, is amended by adding Section 54.0515 to read as follows:

Sec. 54.0515. LEGISLATIVE OVERSIGHT COMMITTEE ON TUITION DEREGULATION. (a) In this section, "committee" means the legislative oversight committee on tuition deregulation.

(b) The committee is composed of ten members as follows:

(1) five members of the senate appointed by the lieutenant governor; and

(2) five members of the house of representatives appointed by the speaker of the house of representatives.

(c) One member of the senate appointed by the lieutenant governor shall be designated as co-chair and one member of the house of representatives appointed by the speaker of the house of representatives shall be designated as co-chair.

(d) An appointed member of the committee serves at the pleasure of the appointing official. In making appointments to the committee, the appointing officials shall attempt to appoint persons who represent the gender composition, minority populations, and geographic regions of the state.

(e) The committee shall:

(1) meet at least annually;

(2) monitor the implementation of tuition deregulation; and

(3) receive and review information concerning the impact of tuition deregulation.

(f) The committee may request reports and other information from institutions of higher education and the coordinating board as necessary to carry out this section.

(g) The coordinating board shall:

(1) report to the committee on the development of the performance criteria adopted for each institution of higher education under Section 54.0513(b-3); and

(2) report to the committee each year on the certification of any institution of higher education under Section 54.0513(b-3).

(h) Not later than November 15 of each even-numbered year, the committee shall report to the governor, lieutenant governor, and speaker of the house of representatives on the committee's activities under Subsection (e). The report shall include:

(1) an analysis of any problems caused by tuition deregulation; and

(2) recommendations of any legislative action necessary to address those problems.

(i) This section expires September 1, 2007.

(2) On page 2, strike lines 66 to 69, and substitute the following:

"(1) not less than 20 percent of the amount of tuition charged to a resident undergraduate student under Section 54.0513 in excess of \$46 but less than or equal to \$92 per semester credit hour;

(2) not less than 40 percent of the amount of tuition charged to a resident undergraduate student under Section 54.0513 in excess of \$92 per semester credit hour; and

(3) not less than three percent of the amount of"

The floor amendment was read.

Senator West offered the following amendment to the amendment:

**Floor Amendment No. 3**

Amend Floor Amendment No. 2 to **CSHB 3015** as follows:

On page 3, strike line 2 through line 9, and insert the following:

"(1) not less than 40 percent of the amount of tuition charged to a resident undergraduate student under Section 54.0513 in excess of \$46 per semester credit hour; and

(2) not less than three percent of the amount of"

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

**RECORD OF VOTES**

Senators Lindsay and Ogden asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 3.

Question recurring on the adoption of Floor Amendment No. 2 as amended, the amendment as amended was adopted by a viva voce vote.

**RECORD OF VOTES**

Senators Lindsay and Ogden asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 2 as amended.

**VOTE RECONSIDERED**

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

Question — Shall Floor Amendment No. 1 to **CSHB 3015** be adopted?

Senator Whitmire offered the following amendment to the amendment:

**Floor Amendment No. 4**

Amend Floor Amendment No. 1 to **CSHB 3015** as follows:

On page 2, line 9 of the amendment add the following new subsection: "(b-4) Subsections (b-2), (b-3) and (b-4) shall expire on September 1, 2007."

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

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

Senator Ellis offered the following amendment to the bill:

**Floor Amendment No. 5**

Amend **CSHB 3015**, committee report, Section 5, Chapter 56 of the Education Code, by making the following changes:

- 1) Page 3, line 6, strike "and"
- 2) Page 3, line 8, after "Legislature" strike "." and insert "; and"
- 3) Page 3, line 9, insert "(3) TEXAS Grants."

The floor amendment was read and was adopted without objection.

Senator Barrientos offered the following amendment to the bill:

#### **Floor Amendment No. 6**

Amend **CSHB 3015** (Senate committee printing) by striking SECTION 3 and renumbering subsequent SECTIONS accordingly.

The floor amendment was read and failed of adoption by the following vote: Yeas 14, Nays 17.

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

Nays: Armbrister, Averitt, Bivins, Carona, Deuell, Duncan, Estes, Fraser, Harris, Janek, Lindsay, Nelson, Ogden, Ratliff, Shapiro, Staples, Williams.

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

#### **Floor Amendment No. 7**

Amend **CSHB 3015** by adding the following appropriately numbered SECTION and renumbering existing SECTIONS accordingly:

SECTION \_\_\_\_\_. (a) Section 61.088, Education Code, as added by Chapter 795, Acts of the 77th Legislature, Regular Session, 2001, is renumbered as Section 61.0901, Education Code, and amended to read as follows:

Sec. 61.0901 [~~61.088~~]. HIGHER EDUCATION ASSISTANCE [~~PILOT~~] PROGRAM. (a) The board shall administer and coordinate the Higher Education Assistance [~~Pilot~~] Program to:

(1) provide to prospective students in [~~three~~] areas of this state with the highest number of students who do not attend institutions of higher education, as determined by the board, information related to enrollment in public or private or independent institutions of higher education, including admissions and financial aid information; and

(2) assist those prospective students in completing applications related to enrollment in those institutions, including admissions and financial aid applications.

(b) The board shall provide the information and assistance required by this section at least twice each year at one or more appropriate locations in each area served by the [~~pilot~~] program.

(c) The board may coordinate with an institution of higher education or other entity to provide the information and assistance required by this section in each area served by the [~~pilot~~] program.

(d) Not later than December 1 of each even-numbered year [~~August 31, 2003~~], the board shall submit to the legislature a report on the effectiveness of the [~~pilot~~] program[~~, including recommendations on whether to implement the program on a statewide basis~~]. The report must include a comparison of the number of college acceptances before and after the implementation of the program from areas served by the program.

~~[(e) The pilot program ends and this section expires August 31, 2003.]~~

(b) Notwithstanding Section \_\_\_ of this Act, Subsection (a) of this section takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Subsection (a) takes effect September 1, 2003, and has the effect of reenacting, amending, and renumbering Section 61.088, Education Code, as added by Chapter 795, Acts of the 77th Legislature, Regular Session, 2001.

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

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

**CSHB 3015** as amended was passed to third reading by a viva voce vote.

#### **RECORD OF VOTES**

Senators Barrientos, Ellis, Fraser, Gallegos, and Van de Putte asked to be recorded as voting "Nay" on the passage of **CSHB 3015** to third reading.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 3015 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 3015** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 4.

Yeas: Armbrister, Averitt, Bivins, Brimer, Carona, Deuell, Duncan, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Ratliff, Shapiro, Shapleigh, Staples, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Barrientos, Ellis, Gallegos, Hinojosa.

The bill was read third time and was passed by the following vote: Yeas 23, Nays 8.

Yeas: Armbrister, Averitt, Bivins, Brimer, Carona, Deuell, Duncan, Estes, Harris, Jackson, Janek, Lindsay, Nelson, Ogden, Ratliff, Shapiro, Shapleigh, Staples, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Barrientos, Ellis, Fraser, Gallegos, Hinojosa, Lucio, Madla, Van de Putte.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

May 27, 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 270**, Honoring Wendell Moore of Paris on his act of heroism in rescuing Lenore Gonzalez.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives**COMMITTEE SUBSTITUTE  
HOUSE BILL 2359 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2359** at this time on its second reading:

**CSHB 2359**, Relating to the programs and systems administered by the Employees Retirement System of Texas.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2359** as follows:

(1) Add new SECTION 7 to read as follows and renumber the subsequent sections appropriately:

"SECTION 7. Section 615.003, Government Code, is amended to read as follows:

Sec. 615.003. **APPLICABILITY.** This chapter applies only to eligible survivors of the following individuals:

(1) an individual elected, appointed, or employed as a peace officer by the state or a political subdivision of the state under Article 2.12, Code of Criminal Procedure, or other law;

(2) a paid probation officer appointed by the director of a community supervision and corrections department who has the duties set out in Section 76.002 and the qualifications set out in Section 76.005, or who was appointed in accordance with prior law;

(3) a parole officer employed by the pardons and paroles division of the Texas Department of Criminal Justice who has the duties set out in Section 508.001 and the qualifications set out in Section 508.113 or in prior law;

(4) a paid jailer;

(5) a member of an organized police reserve or auxiliary unit who regularly assists peace officers in enforcing criminal laws;

(6) a member of the class of employees of the institutional division or the state jail division of the Texas Department of Criminal Justice formally designated as custodial personnel under Section 615.006 by the Texas Board of Criminal Justice or its predecessor in function;

(7) a jailer or guard of a county jail who is appointed by the sheriff and who:

(A) performs a security, custodial, or supervisory function over the admittance, confinement, or discharge of prisoners; and

(B) is certified by the Commission on Law Enforcement Officer Standards and Education;

(8) a juvenile correctional employee of the Texas Youth Commission;

(9) an employee of the Texas Department of Mental Health and Mental Retardation who:

(A) works at the department's maximum security unit; or

(B) performs on-site services for the Texas Department of Criminal Justice;

(10) an individual who is employed by the state or a political or legal subdivision and is subject to certification by the Texas Commission on Fire Protection;

(11) an individual employed by the state or a political or legal subdivision whose principal duties are aircraft crash and rescue fire fighting;

(12) a member of an organized volunteer fire-fighting unit that:

(A) renders fire-fighting services without remuneration; and

(B) ~~[consists of not fewer than 20 active members, a majority of whom are present at each meeting; and~~

~~[(C)]~~ conducts a minimum of two drills each month, each two hours long; or

(13) an individual who:

(A) performs emergency medical services or operates an ambulance;

(B) is employed by a political subdivision of the state or is an emergency medical services volunteer as defined by Section 773.003, Health and Safety Code; and

(C) is qualified as an emergency care attendant or at a higher level of training under Section 773.046, 773.047, 773.048, 773.049, or 773.0495, Health and Safety Code."

(2) Amend SECTION 42 by adding subsection (e) to read as follows:

"(e) The change in law made by this Act to Section 615.003, Government Code, relating to the death of a member of an organized volunteer fire-fighting unit applies only in relation to a death that occurs on or after the effective date of this Act. Matters regarding eligibility, payment, and benefits under Chapter 615, Government Code, in

relation to a death that occurs before the effective date of this Act are governed by the law in effect when the death occurs, and the former law is continued in effect for that purpose."

The floor amendment was read and was adopted without objection.

Senator Armbrister offered the following amendment to the bill:

### **Floor Amendment No. 2**

Amend **CSHB 2359** by adding the following appropriately numbered section to read as follows and by renumbering existing sections accordingly:

SECTION \_\_\_\_\_. Subchapter G, Chapter 1551, Insurance Code, as effective June 1, 2003, is amended by adding Section 1551.3015 to read as follows:

Sec. 1551.3015. COST ASSESSMENT FOR CERTAIN PARTICIPANTS. Notwithstanding any other provision of law, the board of trustees may impose against an employer whose employees are not paid salaries from amounts appropriated by the General Appropriations Act and whose participation in the group benefits program begins after August 31, 2003, as a condition for participation in the program, a one-time assessment of administrative costs for participation of the employees and annuitants in the program, which may include the actuarial costs of including the group in the program and a participation premium determined by the board. The board of trustees shall deposit all amounts recovered under this section in the employees life, accident, and health insurance and benefits fund.

The floor amendment was read and was adopted without objection.

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

**CSHB 2359** as amended was passed to third reading without objection.

### **COMMITTEE SUBSTITUTE HOUSE BILL 2359 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 **CSHB 2359** 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 3588 ON SECOND READING**

On motion of Senator Ogden and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3588** at this time on its second reading:

**CSHB 3588**, Relating to the construction, acquisition, financing, maintenance, management, operation, ownership, and control of transportation facilities and the progress, improvement, policing, and safety of transportation in the state; imposing criminal penalties.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 3588** by adding the following appropriately numbered articles and renumbering subsequent articles accordingly:

ARTICLE \_\_\_\_ . DRIVER RESPONSIBILITY

SECTION \_\_\_\_ .01. Subtitle I, Title 7, Transportation Code, is amended by adding Chapter 708 to read as follows:

CHAPTER 708. DRIVER RESPONSIBILITY PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 708.001. DEFINITIONS. In this chapter, "department" and "license" have the meanings assigned by Section 521.001.

Sec. 708.002. RULES. The department shall adopt and enforce rules to implement and enforce this chapter.

Sec. 708.003. FINAL CONVICTIONS. For purposes of this chapter, a conviction for an offense to which this chapter applies is a final conviction, regardless of whether the sentence is probated.

[Sections 708.004-708.050 reserved for expansion]

SUBCHAPTER B. DRIVER'S LICENSE POINTS SURCHARGE

Sec. 708.051. NONAPPLICABILITY. This subchapter does not apply to:

- (1) a conviction that became final before September 1, 2003; or
- (2) an offense covered by Subchapter C.

Sec. 708.052. ASSIGNMENT OF POINTS FOR CERTAIN CONVICTIONS. (a) The driver's license of a person accumulates a point under this subchapter as of the date the department records a conviction of the person under Section 521.042 or other applicable law.

(b) For each conviction arising out of a separate transaction, the department shall assign points to a person's license as follows:

(1) two points for a moving violation of the traffic law of this state or another state that is not described by Subdivision (2); and

(2) three points for a moving violation of the traffic law of this state, another state, or a political subdivision of this or another state that resulted in an accident.

(c) The department by rule shall designate the offenses that constitute a moving violation of the traffic law under this section.

(d) Notwithstanding Subsection (b), the department may not assign points to a person's driver's license if the offense of which the person was convicted is the offense of speeding and the person was at the time of the offense driving less than 10 percent faster than the posted speed limit. This subsection does not apply to an offense committed in a school crossing zone as defined by Section 541.302.

(e) Notwithstanding Subsection (b), the department may not assign points to a person's license if the offense committed by the person was adjudicated under Article 45.051(c-1) or 45.0511(1)(1), Code of Criminal Procedure.

Sec. 708.053. ANNUAL SURCHARGE FOR POINTS. Each year, the department shall assess a surcharge on the license of a person who has accumulated six or more points under this subchapter during the preceding 36-month period.



Sec. 708.054. AMOUNT OF POINTS SURCHARGE. The amount of a surcharge under this chapter is \$100 for the first six points and \$25 for each additional point.

Sec. 708.055. NOTICE OF ASSIGNMENT OF FIFTH POINT. The department shall notify the holder of a driver's license of the assignment of a fifth point on that license by first class mail sent to the person's most recent address as shown on the records of the department.

[Sections 708.056-708.100 reserved for expansion]

SUBCHAPTER C. SURCHARGES FOR CERTAIN CONVICTIONS  
AND LICENSE SUSPENSIONS

Sec. 708.101. NONAPPLICABILITY. This subchapter does not apply to a conviction that became final before September 1, 2003.

Sec. 708.102. SURCHARGE FOR CONVICTION OF CERTAIN INTOXICATED DRIVER OFFENSES. (a) In this section, "offense relating to the operating of a motor vehicle while intoxicated" has the meaning assigned by Section 49.09, Penal Code.

(b) Each year the department shall assess a surcharge on the license of each person who during the preceding 36-month period has been finally convicted of an offense relating to the operating of a motor vehicle while intoxicated.

(c) The amount of a surcharge under this section is \$1,000 per year, except that the amount of the surcharge is:

(1) \$1,500 per year for a second or subsequent conviction within a 36-month period; and

(2) \$2,000 for a first or any subsequent conviction if it is shown on the trial of the offense that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.16 or more at the time the analysis was performed.

(d) A surcharge under this section for the same conviction may not be assessed in more than three years.

Sec. 708.103. SURCHARGE FOR CONVICTION OF DRIVING WHILE LICENSE INVALID OR WITHOUT FINANCIAL RESPONSIBILITY. (a) Each year the department shall assess a surcharge on the license of each person who during the preceding 36-month period has been convicted of an offense under Section 521.457, 601.191, or 601.371.

(b) The amount of a surcharge under this section is \$250 per year.

Sec. 708.104. SURCHARGE FOR CONVICTION OF DRIVING WITHOUT VALID LICENSE. (a) Each year the department shall assess a surcharge on the license of a person who during the preceding 36-month period has been convicted of an offense under Section 521.021.

(b) The amount of a surcharge under this section is \$100 per year.

(c) A surcharge under this section for the same conviction may not be assessed in more than three years.

[Sections 708.105-708.150 reserved for expansion]

SUBCHAPTER D. COLLECTION OF SURCHARGES

Sec. 708.151. NOTICE OF SURCHARGE. The department shall notify the holder of a driver's license of the assessment of a surcharge on that license by first class mail sent to the person's most recent address as shown on the records of the department. The notice must specify the date by which the surcharge must be paid and state the consequences of a failure to pay the surcharge.

Sec. 708.152. FAILURE TO PAY SURCHARGE. (a) If before the 30th day after the date the department sends a notice under Section 708.151 the person fails to pay the amount of a surcharge on the person's license or fails to enter into an installment payment agreement with the department, the license of the person is automatically suspended.

(b) A license suspended under this section remains suspended until the person pays the amount of the surcharge and any related costs.

Sec. 708.153. INSTALLMENT PAYMENT OF SURCHARGE. (a) The department by rule shall provide for the payment of a surcharge in installments.

(b) A rule under this section:

(1) may not permit a person to pay a surcharge:

(A) of less than \$2,300 over a period of more than 12 consecutive months; or

(B) of \$2,300 or more over a period of more than 24 consecutive months; and

(2) may provide that if the person fails to make a required installment payment, the department may declare the amount of the unpaid surcharge immediately due and payable.

Sec. 708.154. CREDIT CARD PAYMENT OF SURCHARGE. (a) The department by rule may authorize the payment of a surcharge by use of a credit card. The rules shall require the person to pay all costs incurred by the department in connection with the acceptance of the credit card.

(b) If a surcharge or a related cost is paid by credit card and the amount is subsequently reversed by the issuer of the credit card, the license of the person is automatically suspended.

(c) A license suspended under this section remains suspended until the person pays the amount of the surcharge and any related costs.

Sec. 708.155. CONTRACTS FOR COLLECTION OF SURCHARGES. The department may enter into a contract with a private attorney or a public or private vendor for the provision of services for the collection of surcharges receivable under this chapter.

Sec. 708.156. REMITTANCE OF SURCHARGES COLLECTED TO COMPTROLLER. Each surcharge collected by the department under this chapter shall be remitted to the comptroller as required by Section 780.002, Health and Safety Code.

SECTION \_\_\_\_.02. Subtitle B, Title 9, Health and Safety Code, is amended by adding Chapter 780 to read as follows:

CHAPTER 780. TRAUMA FACILITIES AND  
EMERGENCY MEDICAL SERVICES

Sec. 780.001. DEFINITIONS. In this chapter:

(1) "Account" means the designated trauma facility and emergency medical services account established under Section 780.003.

(2) "Commissioner" means the commissioner of public health.

(3) "Department" means the Texas Department of Health.

Sec. 780.002. DEPOSITS TO ACCOUNT. (a) On the first Monday of each month, the Department of Public Safety shall remit the surcharges collected during the previous month under the driver responsibility program operated by that department under Chapter 708, Transportation Code, to the comptroller.

(b) The comptroller shall deposit 49.5 percent of the money received under Subsection (a) to the credit of the account established under this chapter and 49.5 percent of the money to the general revenue fund. The remaining one percent of the amount of the surcharges shall be deposited to the general revenue fund and may be appropriated only to the Department of Public Safety for administration of the driver responsibility program operated by that department under Chapter 708, Transportation Code.

(c) Notwithstanding Subsection (b), in any state fiscal year the comptroller shall deposit 49.5 percent of the surcharges collected under Chapter 708, Transportation Code, to the credit of the general revenue fund only until the total amount of the surcharges deposited to the credit of the general revenue fund under Subsection (b), and the court costs deposited to the credit of that fund under Section 542.4031(g)(1), Transportation Code, equals \$250 million for that year. If in any state fiscal year the amount received by the comptroller under those laws exceeds \$250 million, the comptroller shall deposit 49.5 percent of the additional amount received under Subsection (a) to the account established under this chapter and 49.5 percent of the additional amount to the credit of the Texas mobility fund.

Sec. 780.003. ACCOUNT. (a) The designated trauma facility and emergency medical services account is created as an account in the state treasury. Money in the account may be appropriated only to the department for the purposes described by Section 780.004.

(b) The account is composed of money deposited to the credit of the account under Section 780.002, and the earnings of the account.

(c) Sections 403.095 and 404.071, Government Code, do not apply to the account.

Sec. 780.004. PAYMENTS FROM THE ACCOUNT. (a) The commissioner, with advice and counsel from the chairpersons of the trauma service area regional advisory councils, shall use money appropriated from the account established under this chapter to fund designated trauma facilities, county and regional emergency medical services, and trauma care systems in accordance with this section.

(b) The commissioner shall maintain a reserve of \$500,000 of money appropriated from the account for extraordinary emergencies.

(c) In any fiscal year, the commissioner shall use at least 96 percent of the money appropriated from the account, after any amount necessary to maintain the reserve established by Subsection (b) is deducted, to fund a portion of the

uncompensated trauma care provided at facilities designated as state trauma facilities by the department or an undesignated facility in active pursuit of designation. Funds may be disbursed under this subsection based on a proportionate share of uncompensated trauma care provided in the state and may be used to fund innovative projects to enhance the delivery of patient care in the overall emergency medical services and trauma care system.

(d) In any fiscal year, the commissioner shall use not more than two percent of the money appropriated from the account, after any amount necessary to maintain the reserve established by Subsection (b) is deducted, to fund, in connection with an effort to provide coordination with the appropriate trauma service area, the cost of supplies, operational expenses, education and training, equipment, vehicles, and communications systems for local emergency medical services. The money shall be distributed on behalf of eligible recipients in each county to the trauma service area regional advisory council for that county. To receive a distribution under this subsection, the regional advisory council must be incorporated as an entity that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under Section 501(c)(3) of the code. The share of the money allocated to the eligible recipients in a county's geographic area shall be based on the relative geographic size and population of the county and on the relative number of emergency or trauma care runs performed by eligible recipients in the county. Money that is not disbursed by a regional advisory council to eligible recipients for approved functions by the end of the fiscal year in which the funds were disbursed shall be returned to the department to be used in accordance with Subsection (c).

(e) In any fiscal year, the commissioner may use not more than one percent of the money appropriated from the account, after any amount necessary to maintain the reserve established by Subsection (b) is deducted, for operation of the 22 trauma service areas and for equipment, communications, and education and training for the areas. Money distributed under this subsection shall be distributed on behalf of eligible recipients in each county to the trauma service area regional advisory council for that county. To receive a distribution under this subsection, the regional advisory council must be incorporated as an entity that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under Section 501(c)(3) of the code. A regional advisory council's share of money distributed under this section shall be based on the relative geographic size and population of each trauma service area and on the relative amount of trauma care provided. Money that is not disbursed by a regional advisory council to eligible recipients for approved functions by the end of the fiscal year in which the funds were disbursed shall be returned to the department to be used in accordance with Subsection (c).

(f) In any fiscal year, the commissioner may use not more than one percent of money appropriated from the account, after any amount necessary to maintain the reserve established by Subsection (b) is deducted, to fund the administrative costs of the bureau of emergency management of the department associated with

administering the trauma program, the state emergency medical services program, and the account and to fund the costs of monitoring and providing technical assistance for those programs and that account.

(g) In a trauma service area that includes a county with a population of 3.3 million or more, a trauma service area regional advisory council may enter into an agreement with a regional council of governments to execute its responsibilities and functions under this chapter.

(h) For purposes of this section "pursuit of designation" means:

(1) submission of an application with the state or appropriate agency for trauma verification and designation not later than December 31, 2003;

(2) submission of data to the department trauma registry, provided that only data submitted to the trauma registry on or after September 1, 2003, will qualify for consideration of reimbursement under this program;

(3) participation in trauma service area regional advisory council initiatives on or before December 31, 2003; and

(4) creation of a hospital trauma performance committee not later than December 31, 2003.

(i) If trauma designation is not attained by an undesignated facility in active pursuit of designation on or before December 31, 2005, any funds received by the undesignated facility for unreimbursed trauma services must be returned to the state.

Sec. 780.0045. PAYMENT TO PHYSICIANS. (a) Each designated state trauma facility that receives funds under Section 780.004(c) shall distribute a portion of those funds to physicians on the medical staff of the facility to offset the costs of the uncompensated trauma care provided by the physicians.

(b) Each designated state trauma facility that receives funds under Section 780.004(c) shall develop, in accordance with rules adopted by the department, a physician compensation distribution plan that recognizes the other distribution plans or contracts under which physicians provide trauma care at the facility.

Sec. 780.005. CONTROL OF EXPENDITURES FROM THE ACCOUNT. Money distributed under Section 780.004 shall be used in compliance with Sections 780.004 and 780.0045 on the authorization of the executive committee of the trauma service area regional advisory council.

Sec. 780.006. LOSS OF FUNDING ELIGIBILITY. For a period of not less than one year or more than three years, as determined by the commissioner, the department may not disburse money under Section 780.004 to a county, municipality, or local recipient that the commissioner finds used money in violation of that section.

SECTION \_\_\_\_ .03. Not later than December 1, 2004, the Texas Department of Health shall submit to the lieutenant governor and the speaker of the house of representatives a report concerning the use of money under Chapter 780, Health and Safety Code, as added by this article, and any recommended changes to law to ensure appropriate funding and coordination of services.

SECTION \_\_\_\_ .04. The Texas Department of Health shall adopt rules to implement Section 780.0045, Health and Safety Code, as added by this article, as soon as practicable but not later than June 1, 2004.

ARTICLE \_\_\_\_\_. DISPOSITION OF DEPARTMENT OF  
PUBLIC SAFETY FEES

SECTION \_\_\_\_\_.01. Subchapter C, Chapter 521, Transportation Code, is amended by adding Section 521.058 to read as follows:

Sec. 521.058. DISPOSITION OF FEES. Each fee collected under this subchapter shall be deposited to the credit of the Texas mobility fund.

SECTION \_\_\_\_\_.02. Section 521.313, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) Each fee collected under this section shall be deposited to the credit of the Texas mobility fund.

SECTION \_\_\_\_\_.03. Section 521.3466, Transportation Code, is amended by adding Subsection (e) to read as follows:

(e) Each fee collected under this section shall be deposited to the credit of the Texas mobility fund.

SECTION \_\_\_\_\_.04. Subchapter R, Chapter 521, Transportation Code, is amended by adding Section 521.427 to read as follows:

Sec. 521.427. DISPOSITION OF FEES. (a) Except as provided by Subsections (b) and (c), each fee collected under this subchapter shall be deposited to the credit of the Texas mobility fund.

(b) Subsection (a) does not apply to:

(1) the portion of a fee collected under Section 521.421(b) or Section 521.421(f), as added by Chapter 1156, Acts of the 75th Legislature, Regular Session, 1997, that is required by Section 662.011 to be deposited to the credit of the motorcycle education fund account;

(2) a fee collected under Section 521.421(f), as added by Chapter 510, Acts of the 75th Legislature, Regular Session, 1997;

(3) a fee collected under Section 521.421(g); or

(4) a fee collected under Section 521.422(b) or (c).

(c) The first \$90,500,254 of fees to which Subsection (a) applies that are collected during the state fiscal biennium ending August 31, 2005, shall be deposited to the credit of the general revenue fund. This subsection expires September 1, 2005.

SECTION \_\_\_\_\_.05. Section 522.029, Transportation Code, is amended by adding Subsection (i) to read as follows:

(i) Except as provided by Section 662.011, each fee collected under this section shall be deposited to the credit of the Texas mobility fund.

SECTION \_\_\_\_\_.06. Section 524.051, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) Each fee collected under this section shall be deposited to the credit of the Texas mobility fund.

SECTION \_\_\_\_\_.07. Subchapter H, Chapter 548, Transportation Code, is amended by adding Section 548.508 to read as follows:

Sec. 548.508. DISPOSITION OF FEES. Except as provided by Sections 382.037 and 382.0622, Health and Safety Code, and Section 548.5055, each fee collected by the department under this subchapter shall be deposited to the credit of the Texas mobility fund.

SECTION \_\_\_\_ .08. Section 644.153, Transportation Code, is amended by adding Subsection (i) to read as follows:

(i) Each penalty collected under this section shall be deposited to the credit of the Texas mobility fund.

SECTION \_\_\_\_ .09. Section 724.046, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) Each fee collected under this section shall be deposited to the credit of the Texas mobility fund.

SECTION \_\_\_\_ .10. Section 521.055(d), Transportation Code, is repealed.

SECTION \_\_\_\_ .11. This article applies only to a fee or penalty collected on or after the effective date of this Act.

#### ARTICLE \_\_\_\_ . MISCELLANEOUS PROVISIONS

SECTION \_\_\_\_ .01. (a) Subchapter D, Chapter 542, Transportation Code, is amended by adding Section 542.4031 to read as follows:

Sec. 542.4031. ADDITIONAL COURT COST. (a) In addition to other costs, including a cost under Section 542.403, a person convicted of an offense under this subtitle shall pay \$30 as a court cost.

(b) An officer collecting a cost due under this section in a case in municipal court shall keep separate records of the money collected and shall deposit the money in the municipal treasury.

(c) An officer collecting a cost due under this section in a justice, county, or district court shall keep separate records of the money collected and shall deposit the money in the county treasury.

(d) Each calendar quarter, an officer collecting a cost due under this section shall submit a report to the comptroller. The report must comply with Articles 103.005(c) and (d), Code of Criminal Procedure. If no money due as a cost under this section is collected in any quarter, the report required for that quarter shall be filed in the regular manner, and the report shall state that no money due under this section was collected.

(e) The custodian of money in a municipal or county treasury may deposit money collected under this section in an interest-bearing account. The custodian shall:

(1) keep records of the amount of money collected under this section that is on deposit in the treasury; and

(2) not later than the last day of the month following each calendar quarter, remit to the comptroller money collected under this section during the preceding quarter, as required by the comptroller.

(f) A municipality or county may retain five percent of the money collected under this section as a service fee for the collection if the municipality or county remits the funds to the comptroller within the period prescribed in Subsection (e). The municipality or county may retain any interest accrued on the money if the custodian of the money deposited in the treasury keeps records of the amount of money collected under this section that is on deposit in the treasury and remits the funds to the comptroller within the period prescribed in Subsection (e).

(g) Of the money received by the comptroller under this section, the comptroller shall deposit:

(1) 67 percent to the credit of the undedicated portion of the general revenue fund; and

(2) 33 percent to the credit of the designated trauma facility and emergency medical services account under Section 780.003, Health and Safety Code.

(h) Notwithstanding Subsection (g), in any state fiscal year the comptroller shall deposit court costs received under that subsection to the credit of the general revenue fund only until the total amount of the court costs deposited to the credit of the general revenue fund under that subsection and the surcharges deposited to the credit of that fund under Section 780.002(b), Health and Safety Code, equals \$250 million for that year. If in any state fiscal year the amount received by the comptroller under those laws exceeds \$250 million, the comptroller shall deposit the additional amount received under Subsection (g) to the credit of the Texas mobility fund.

(i) Money collected under this section is subject to audit by the comptroller. Money spent is subject to audit by the state auditor.

(j) In this section a person is considered to have been convicted in a case if:

(1) a sentence is imposed;

(2) the person receives community supervision or deferred adjudication; or

(3) the court defers final disposition of the case.

(b) The change in law made by this section applies only to an offense committed on or after the effective date of this section. For the purposes of this section, an offense was committed before the effective date of this section if any element of the offense occurred before that date. An offense committed before the effective date of this section is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

WENTWORTH  
OGDEN

The floor amendment was read.

Senator Wentworth offered the following amendment to the amendment:

**Floor Amendment No. 1A**

Amend Floor Amendment No. 1 to **CSHB 3588** in added Section 708.052(e), Transportation Code, between "Article" and "Code of Criminal Procedure", by striking "45.051(c-1) or 45.0511(l)(1)" and substituting "45.051 or 45.0511".

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

Senator Madla offered the following amendment to the amendment:

**Floor Amendment No. 1B**

Amend Floor Amendment No. 1 to **CSHB 3588** by striking all of Sec. 780.0045 on page 12, line 17 through page 13, line 1, PAYMENT TO PHYSICIANS.

The amendment to the amendment was read and failed of adoption by the following vote: Yeas 11, Nays 19.

Yeas: Averitt, Duncan, Gallegos, Harris, Jackson, Lucio, Madla, Shapiro, Shapleigh, Staples, Van de Putte.

Nays: Armbrister, Barrientos, Bivins, Brimer, Carona, Deuell, Ellis, Estes, Fraser, Hinojosa, Lindsay, Nelson, Ogden, Ratliff, Wentworth, West, Whitmire, Williams, Zaffirini.

Absent: Janek.

**Floor Amendment No. 1C was not offered.**



Senator Whitmire offered the following amendment to the amendment:

**Floor Amendment No. 1D**

Amend Floor Amendment No. 1 to **CSHB 3588** as follows:

On page 13 line 12 insert a new section as follows:

Sec. 780.007. This Chapter expires on September 1, 2007.

On page 19 line 1 insert a new section (k) as follows:

(k) This section expires on September 1, 2007.

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

Senator West offered the following amendment to the amendment:

**Floor Amendment No. 1E**

Amend Floor Amendment No. 1 to **CSHB 3588** as follows:

On page 6 line 23 after the "." add The collection fee charged may not exceed fifteen percent.

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

Question recurring on the adoption of Floor Amendment No. 1 as amended, the amendment as amended was adopted by a viva voce vote.

**RECORD OF VOTE**

Senator Jackson asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 1 as amended.

Senator Ogden offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 3588** (committee printing) as follows:

(1) In SECTION 11.03 of the bill, in proposed Section 152.0412(e), Transportation Code (page 47, line 66), between "section" and the period, insert "for the period specified by the comptroller".

(2) In ARTICLE 11 of the bill, add the following appropriately numbered section and renumber subsequent sections accordingly:

SECTION 11 \_\_\_\_\_. (a) Not later than September 1, 2003, the Texas Department of Transportation shall:

(1) establish standard presumptive values for motor vehicles as provided by Section 152.0412, Tax Code, as added by this Act;

(2) modify the department's vehicle registration and titling system as needed to include that information and administer that section; and

(3) make that information available through the system to all county tax assessor-collectors.

(b) The comptroller shall certify 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 comptroller under Subsection (b) of this section is later than September 23, 2003, the Texas Department of Transportation shall transfer \$8 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 comptroller 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.

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

(3) In SECTION 1.01 of the bill, in proposed Section 227.041, Transportation Code (page 5, between lines 38 and 39), insert the following:

(d) Section 25.1032(c), Government Code, does not apply to a condemnation proceeding brought under this subchapter.

(4) In SECTION 2.01 of the bill, in proposed Section 370.163, Transportation Code (page 17, between lines 34 and 35), insert the following:

(d) Section 25.1032(c), Government Code, does not apply to a condemnation proceeding brought under this subchapter.

(5) In SECTION 4.01 of the bill, in proposed Section 91.091, Transportation Code (page 34, between lines 18 and 19), insert the following:

(d) Section 25.1032(c), Government Code, does not apply to a condemnation proceeding brought under this subchapter.

(6) In ARTICLE 12 of the bill, add the following appropriately numbered SECTION and renumber subsequent SECTIONS appropriately:

SECTION 12 \_\_\_\_\_. Subchapter D, Chapter 203, Transportation Code, is amended by adding Section 203.066 to read as follows:

Sec. 203.066. APPLICABILITY OF OTHER LAW. Section 25.1032(c), Government Code, does not apply to a condemnation proceeding brought under this subchapter.

(7) In SECTION 1.01 of the bill, in proposed Section 227.001, Transportation Code (page 1, lines 49-56), strike Subdivision (7) and substitute the following:

(7) "Public utility facility" means:

(A) a water, wastewater, natural gas, or petroleum pipeline or associated equipment;

(B) an electric transmission or distribution line or associated equipment;

or  
(C) telecommunications, information services, or cable television infrastructure or associated equipment, including fiber optic cable, conduit, and wireless communications equipment.

(8) In SECTION 1.01 of the bill, in proposed Section 227.015, Transportation Code (page 2, lines 62 and 63), strike proposed Subdivision (2) and substitute the following:

(2) direct the time and manner of construction of a public utility facility on the Trans-Texas Corridor and direct the time and manner of construction or operation of any other facility on the Trans-Texas Corridor.

(9) In SECTION 1.01 of the bill, in proposed Section 227.021(c), Transportation Code (page 3, line 8), strike "Corridor." and substitute "Corridor; provided, however, the department shall grant the owner of a public utility facility that is located on the Trans-Texas Corridor reasonable access to operate and maintain that owner's public utility facilities."

(10) In SECTION 1.01 of the bill, in proposed Section 227.021, Transportation Code (page 3, lines 11 and 12), strike Subsection (d) and substitute the following:

(d) The department may construct or contract for the construction of public utility facilities. However, the department may not directly or indirectly provide water, wastewater, natural gas, petroleum pipeline, electric transmission, electric distribution, telecommunications, information, or cable television services.

(11) In SECTION 1.01 of the bill, in proposed Section 227.021, Transportation Code (page 3, between lines 12 and 13), add the following:

(e) Nothing in this chapter, or any contractual right obtained under a contract with the department authorized by this chapter, supersedes or renders ineffective any provision of another law applicable to the owner or operator of a public utility facility, including any provision of the Utilities Code regarding licensing, certification, and regulatory jurisdiction of the Public Utility Commission of Texas or Railroad Commission of Texas.

(12) In SECTION 1.01 of the bill, in proposed Section 227.026(c), Transportation Code (page 4, line 8), strike "facility." and substitute "facility in the Trans-Texas Corridor; provided that the department has adopted rules requiring each common user to avoid damaging any equipment that it does not own or operate."

(13) In SECTION 1.01 of the bill, in proposed Section 227.027(a), Transportation Code (page 4, at the end of line 11), add "This subsection does not prohibit an owner of a public utility facility or a proposed public utility facility from conducting any necessary environmental evaluation for the public utility facility. The department is entitled to review and give final approval regarding the sufficiency of any environmental evaluation conducted for a facility within the Trans-Texas Corridor."

(14) In SECTION 1.01 of the bill, in proposed Section 227.029(c), Transportation Code (page 4, line 52), strike "This" and substitute "Except as provided by Subsections (d)-(l), this".

(15) In SECTION 1.01 of the bill, in proposed Section 227.029, Transportation Code (page 4, between lines 54 and 55), insert the following:

(d) Notwithstanding Subsections (a) and (b), this subsection and Subsections (e)-(i) govern the relocation of a public utility facility. If the department determines that a public utility facility must be relocated, including a relocation caused by the conversion of any road that is part of the state highway system to a highway on the Trans-Texas Corridor, the utility and the department shall negotiate in good faith to

establish reasonable terms and conditions concerning the responsibilities of the parties with regard to sharing of information about the project and the planning and implementation of any necessary relocation of the public utility facility.

(e) The department shall use its best efforts to provide an affected utility with plans and drawings of the project that are sufficient to enable the utility to develop plans for, and determine the cost of, the necessary relocation of the public utility facilities. If the department and the affected utility enter into an agreement after negotiations under Subsection (d), the terms and conditions of the agreement govern the relocation of each public utility facility covered by the agreement.

(f) If the department and an affected utility do not enter into an agreement under Subsection (d), the department shall provide to the affected utility:

(1) written notice of the department's determination that the public utility facility must be removed;

(2) a final plan for relocation of the public utility facility; and

(3) reasonable terms and conditions for an agreement with the utility for the relocation of the public utility facility.

(g) Not later than the 90th day after the date a utility receives the notice from the department, including the plan and agreement terms and conditions under Subsection (f), the utility shall enter into an agreement with the department that provides for the relocation.

(h) If the utility fails to enter into an agreement within the 90-day period under Subsection (g), the department may relocate the public utility facility at the sole cost and expense of the utility less any reimbursement of costs that would have been payable to the utility under applicable law. A relocation by the department under this subsection shall be conducted in full compliance with applicable law, using standard equipment and construction practices compatible with the utility's existing facilities, and in a manner that minimizes disruption of utility service.

(i) The 90-day period under Subsection (g) may be extended:

(1) by mutual agreement between the department and the utility; or

(2) for any period during which the utility is negotiating in good faith with the department to relocate its facility.

(j) Notwithstanding Subsections (d)-(i), an owner of a public utility facility is not obligated to relocate its public utility facility on the Trans-Texas Corridor if it determines that another location is feasible.

(k) If a public utility facility is relocated on the Trans-Texas Corridor, the department shall grant the owner reasonable entry and access to operate and maintain that owner's public utility facility.

(l) Subject to Subsections (a)-(k), the department, as part of the cost of the project, shall pay the cost of the relocation, removal, or grade separation of a public utility facility under Subsections (d)-(i).

(16) In SECTION 1 of the bill, in proposed Section 227.030, Transportation Code (page 4, at the end of line 63), add "Any removal or relocation of a public utility facility is governed by Sections 227.029(d)-(i) and is not governed by this subsection."

(17) In SECTION 1.01 of the bill, in proposed Section 227.041(a), Transportation Code (page 5, line 6), strike "The commission" and substitute "Other than real property, a property right, or a right-of-way used for a public utility facility, the commission".

(18) In SECTION 1.01 of the bill, in proposed Section 227.046(a), Transportation Code (page 6, lines 7 and 8), strike "A telecommunications utility or a telecommunications utility" and substitute "An owner of a public utility facility".

(19) In SECTION 1.01 of the bill, in proposed Section 227.081(f), Transportation Code (page 8, at the end of line 24), add the following:

The department may not require the owner of a public utility facility to pay a fee for placing a facility along or within the Trans-Texas Corridor specifically to provide service to customers within the Trans-Texas Corridor pursuant to an obligation as a provider of last resort. The department may not require payment of a fee for use of the Trans-Texas Corridor by a public utility facility in existence before the establishment of the Trans-Texas Corridor or for use by a facility that replaces a facility in existence before the establishment of the Trans-Texas Corridor unless the owner of the existing public utility facility relocates the public utility facility into the Trans-Texas Corridor of its own volition. For use of the Trans-Texas Corridor by a public utility facility whose owner places the facility in the Trans-Texas Corridor of its own volition, the department may charge the owner a fee as negotiated between the department and the owner. The fee shall be competitively neutral and nondiscriminatory among similarly situated owners of public utility facilities.

(20) In SECTION 1.01 of the bill, in proposed Section 227.082(c), Transportation Code (page 8, at the end of line 37), add "The department may not grant an exclusive license for use of the Trans-Texas Corridor by an owner of a public utility facility if that exclusive use is prohibited by other law."

(21) In SECTION 2.01 of the bill, in proposed Section 370.002, Transportation Code (page 9, lines 62-69), strike Subdivision (9) and substitute the following:

(9) "Public utility facility" means:

(A) a water, wastewater, natural gas, or petroleum pipeline or associated equipment;

(B) an electric transmission or distribution line or associated equipment;

or

(C) telecommunications, information services, or cable television infrastructure or associated equipment, including fiber optic cable, conduit, and wireless communications equipment.

(22) In SECTION 2.01 of the bill, in proposed Section 370.168, Transportation Code (page 18, line 47, through page 19, line 37), strike Subsections (a) through (g), substitute the following, and reletter the subsequent subsections accordingly:

(a) An authority may adopt rules for the authority's approval of the installation, relocation, and removal of a public utility facility in, on, along, over, or under a transportation project.

(b) If the authority determines that a public utility facility located in, on, along, over, or under a transportation project must be relocated, the utility and the authority shall negotiate in good faith to establish reasonable terms and conditions concerning

the responsibilities of the parties with regard to sharing of information about the project and the planning and implementation of any necessary relocation of the public utility facility.

(c) The authority shall use its best efforts to provide an affected utility with plans and drawings of the project that are sufficient to enable the utility to develop plans for, and determine the cost of, the necessary relocation of a public utility facility. If the authority and the affected utility enter into an agreement after negotiations under Subsection (b), the terms and conditions of the agreement govern the relocation of each public utility facility covered by the agreement.

(d) If the authority and an affected utility do not enter into an agreement under Subsection (b), the authority shall provide to the affected utility:

(1) written notice of the authority's determination that the public utility facility must be removed;

(2) a final plan for relocation of the public utility facility; and

(3) reasonable terms and conditions for an agreement with the utility for the relocation of the public utility facility.

(e) Not later than the 90th day after the date a utility receives the notice from the authority, including the plan and agreement terms and conditions under Subsection (d), the utility shall enter into an agreement with the authority that provides for the relocation.

(f) If the utility fails to enter into an agreement within the 90-day period under Subsection (e), the authority may relocate the public utility facility at the sole cost and expense of the utility less any reimbursement of costs that would have been payable to the utility under applicable law. A relocation by the authority under this subsection shall be conducted in full compliance with applicable law, using standard equipment and construction practices compatible with the utility's existing facilities, and in a manner that minimizes disruption of utility service.

(g) The 90-day period under Subsection (e) may be extended:

(1) by mutual agreement between the authority and the utility; or

(2) for any period during which the utility is negotiating in good faith with the authority to relocate its facility.

(h) Subject to Subsections (a)-(g), the authority, as a part of the cost of the transportation project or the cost of operating the transportation project, shall pay the cost of the relocation, removal, or grade separation of a public utility facility under Subsection (a).

(i) The authority may reduce the total costs to be paid by the authority under Subsection (h) by 10 percent for each 30-day period or portion of a 30-day period by which the relocation or removal exceeds the reasonable limit specified by agreement between the authority and the owner or operator of the public utility facility, unless the failure of the owner or operator of the infrastructure to timely relocate or remove the facility results directly from:

(1) a material action or inaction of the authority;

(2) an inability of the public utility facility owner or operator to obtain necessary line clearances to perform the removal or relocation; or

(3) conditions beyond the reasonable control of the owner or operator of the facility, including:

(A) an act of God; or

(B) a labor shortage or strike.

(j) The owner or operator of a public utility facility relocated or removed under Subsection (f) shall reimburse the authority for the expenses the authority reasonably incurred for the relocation or removal of the facility, less any costs that would have been payable to the owner or operator under Subsection (h) had the owner or operator relocated or removed the facility, except that the owner or operator is not required to reimburse the authority if the failure of the owner or operator to timely relocate or remove the facility was the result of circumstances beyond the control of the owner or operator.

(k) The laws of this state applicable to the use of public roads, streets, and waters by a telephone or telegraph corporation apply to the erection, construction, maintenance, location, and operation of a line, pole, or other fixture by a telephone or telegraph corporation over, under, across, on, and along a transportation project constructed by an authority under this chapter.

(23) In SECTION 2.01 of the bill, in proposed Section 370.169(a), Transportation Code (page 19, at the end of line 55), add "Any toll, fee, fare, or other charge imposed on an owner of a public utility facility under this section must be imposed in a manner that is competitively neutral and nondiscriminatory among similarly situated users of the transportation project."

(24) In SECTION 2.01 of the bill, in proposed Section 370.172(b), Transportation Code (page 20, at the end of line 66), add "This subsection is not applicable to fees or assessments charged under approved rate schedules or line extension policies of a municipally owned electric or gas utility."

(25) In SECTION 4.01 of the bill, in proposed Section 91.074(a), Transportation Code (page 33, at the end of line 51), add "A fee may not be required in connection with the placement, maintenance, or other use of a public utility facility."

(26) In SECTION 4.01 of the bill, in proposed Section 91.093, Transportation Code (page 34, between lines 42 and 43), insert the following:

(d) To ensure the safety and convenience of the public, the department shall, when entering any real property, water, or premises on which is located a public utility facility:

(1) comply with applicable industry standard safety codes and practices; and  
(2) notwithstanding Subsection (a), give the owner or operator of the public utility facility not less than 10 days' notice before entering the real property, water, or premises.

(27) In SECTION 4.01 of the bill, in proposed Section 91.093(b), Transportation Code (page 34, line 38), strike "Subsection (a)" and substitute "Subsection (a) or (d)".

(28) In SECTION 4.01 of the bill, in proposed Section 91.093(c), Transportation Code (page 34, line 42), strike "Subsection (a)" and substitute "Subsection (a) or (d)".

(29) In SECTION 4.01 of the bill, in proposed Section 91.105(c), Transportation Code (page 35, line 29), between "state." and "The", insert "A relocation under this subsection must be accomplished pursuant to Subsections (e)-(j)."

(30) In SECTION 4.01 of the bill, in proposed Section 91.105(c), Transportation Code (page 35, lines 30 and 31), strike "if the utility has a compensable property interest in the land occupied by the facility to be relocated".

(31) In SECTION 4.01 of the bill, in proposed Section 91.105, Transportation Code (page 35, between lines 39 and 40), add the following:

(e) If the department determines that a public utility facility must be relocated, the utility and the department shall negotiate in good faith to establish reasonable terms and conditions concerning the responsibilities of the parties with regard to sharing of information about the project and the planning and implementation of any necessary relocation of a public utility facility.

(f) The department shall use its best efforts to provide an affected utility with plans and drawings of the project that are sufficient to enable the utility to develop plans for, and determine the cost of, the necessary relocation of the public utility facility. If the department and the affected utility enter into an agreement after negotiations under Subsection (e), the terms and conditions of the agreement govern the relocation of public utility facilities covered by the agreement.

(g) If the department and an affected utility do not enter into an agreement under Subsection (e), the department shall provide to the affected utility:

(1) written notice of the department's determination that the public utility facility must be removed;

(2) a final plan for relocation of the public utility facility; and

(3) reasonable terms and conditions for an agreement with the utility for the relocation of the public utility facility.

(h) Not later than the 90th day after the date a utility receives the notice from the department, including the plan and agreement terms and conditions under Subsection (g), the utility shall enter into an agreement with the department that provides for the relocation.

(i) If the utility fails to enter into an agreement within the 90-day period under Subsection (h), the department may relocate the public utility facility at the sole cost and expense of the utility less any reimbursement of costs that would have been payable to the utility under applicable law. A relocation by the department under this subsection shall be conducted in full compliance with applicable law, using standard equipment and construction practices compatible with the utility's existing facilities, and in a manner that minimizes disruption of utility service.

(j) The 90-day period under Subsection (h) may be extended:

(1) by mutual agreement between the department and the utility; or

(2) for any period during which the utility is negotiating in good faith with the department to relocate its facility.

(32) Add the following appropriately numbered SECTION to ARTICLE 12 and renumber subsequent SECTIONS of that ARTICLE accordingly:

SECTION 12. \_\_\_\_\_. Section 451.362, Transportation Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Notwithstanding other provisions of this chapter and except as provided by Subsection (c), the board, by order or resolution, may issue bonds that are secured by revenue or taxes of the authority if the bonds:

(1) have a term of not more than 12 months; and



(2) are payable only from revenue or taxes received on or after the date of their issuance and before the end of the fiscal year following the fiscal year in which the bonds are issued.

(c) In an authority in which the principal municipality has a population of 1.5 million or more, bonds may have a term of not more than five years. The bonds are payable only from revenue on taxes received on or after the date of their issuance.

(33) In SECTION 5.01 of the bill, in proposed Section 222.003(e), Transportation Code (page 36, line 19), strike "Subsection (c)(4)" and substitute "Subsection (c)(1)(D)".

(34) In SECTION 5.01 of the bill, in proposed Section 222.003(e), Transportation Code (page 36, line 22), strike "Subsection (c)(4)" and substitute "Subsection (c)(1)(D)".

(35) In SECTION 12.04 of the bill, in amended Section 222.103(h), Transportation Code (page 50, line 47), strike "\$800 million" and substitute "\$800 million".

(36) In SECTION 1.01 of the bill, in proposed Section 227.041(b)(5), Transportation Code (page 5, lines 29-30), strike "in ways that" and substitute ", from or for ancillary facilities, which facilities".

(37) Add the following appropriately numbered ARTICLE and renumber subsequent ARTICLES accordingly:

ARTICLE \_\_\_\_ . STATEWIDE COORDINATION OF  
PUBLIC TRANSPORTATION

SECTION \_\_\_\_ .01. Subtitle K, Title 6, Transportation Code, is amended by adding Chapter 461 to read as follows:

CHAPTER 461. STATEWIDE COORDINATION OF  
PUBLIC TRANSPORTATION

Sec. 461.001. LEGISLATIVE INTENT AND CONSTRUCTION. (a) Public transportation services are provided in this state by many different entities, both public and private. The multiplicity of public transportation providers and services, coupled with a lack of coordination between state oversight agencies, has generated inefficiencies, overlaps in service, and confusion for consumers. It is the intent of this chapter:

- (1) to eliminate waste in the provision of public transportation services;
- (2) to generate efficiencies that will permit increased levels of service; and
- (3) to further the state's efforts to reduce air pollution.

(b) This chapter shall be liberally construed to achieve its purposes.

Sec. 461.002. DEFINITIONS. In this chapter:

(1) "Public transportation provider" means any entity that provides public transportation services if it is a governmental entity or if it receives financial assistance from a governmental entity, whether state, local, or federal. The term does not include private carriers that do not receive financial assistance from a governmental entity. It also does not include a person who provides intercity rail or bus service, commercial air transportation, water transportation, or nonstop service to or from a point located outside this state. If a person provides both public

transportation services and services that are not public transportation services, that person is included within the term only with regard to the provision of public transportation services and to the extent of those public transportation services.

(2) "Public transportation services" means any conveyance of passengers and their hand-carried baggage by a governmental entity or by a private entity if the private entity receives financial assistance for that conveyance from any governmental entity. It does not include intercity rail or bus service, commercial air transportation, water transportation, or nonstop service to or from a point located outside this state.

Sec. 461.003. RULES OF TEXAS TRANSPORTATION COMMISSION. (a) The commission by rule may:

(1) require a state agency that is responsible for ensuring the provision of public transportation services to contract with the department for the department to assume the responsibilities of that agency relating to the provision of public transportation services; and

(2) require a public transportation provider to provide detailed information on its provision of public transportation services, including revenues, routes, maps, categories of passengers served, number of passengers served, and equipment use and condition.

(b) Except with regard to health and human services programs funded by this state, the commission may not direct the planning or operations of an authority created or operating under Chapter 451, 452, 453, or 460.

(c) The commission shall adopt other rules, including rules defining terms, necessary to implement this chapter.

Sec. 461.004. DUTIES OF TEXAS DEPARTMENT OF TRANSPORTATION. (a) The department shall identify:

(1) overlaps and gaps in the provision of public transportation services, including services that could be more effectively provided by existing, privately funded transportation resources;

(2) underused equipment owned by public transportation providers; and

(3) inefficiencies in the provision of public transportation services by any public transportation provider.

(b) The department may contract with any public or private transportation provider for the department to arrange for the provision of public transportation services.

Sec. 461.005. ELIMINATION OF OVERLAPPING SERVICE. (a) To eliminate waste and maximize efficiency, the department shall encourage public transportation providers to agree on the allocation of specific services and service areas among the providers. The department may incorporate these discussions in planning processes such as the development of the statewide transportation improvement program or a local transportation improvement plan.

(b) If public transportation providers do not reach an agreement on a service plan under Subsection (a), the department may develop an interim service plan for that area.

(c) The department may require that all or a percentage of the vehicles used to provide public transportation services comply with specified emissions standards. The standards may vary among geographic areas based on the need of each area to reduce levels of air pollution. This subsection does not apply to an authority created under Chapter 451, 452, 453, or 460.

Sec. 461.006. DUTIES OF PUBLIC TRANSPORTATION PROVIDERS. Each public transportation provider shall cooperate with the department in eliminating waste and ensuring efficiency and maximum coverage in the provision of public transportation services.

Sec. 461.007. INCENTIVES FOR EFFICIENCY. (a) Notwithstanding any other law, including a law establishing a formula for the allocation of public transportation grants, the commission may increase or reduce the amount of a grant made to a public transportation provider based on whether the public transportation provider is complying fully with this chapter.

(b) Notwithstanding any other law, the commission may consider whether a public transportation provider in a geographic area of this state is complying fully with this chapter in executing the commission's other responsibilities relating to that area.

SECTION \_\_\_\_ .02. Section 455.0015, Transportation Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) It is the intent of the legislature that, whenever possible, and to the maximum extent feasible, the existing network of transportation providers, and in particular the fixed route components of the existing networks, be used to meet the client transportation requirements of the state's social service agencies and their agents. The legislature recognizes the contributions of nonprofit entities dedicated to providing social services and related activities and encourages the continued community involvement of these entities in this area. The legislature likewise recognizes the potential cost savings and other benefits of utilizing existing private sector transportation resources. The department will contract with and promote the use of private sector transportation resources to the maximum extent feasible consistent with the goals of this subsection.

(c) Each health and human services agency of this state shall contract with the department for the department to assume all responsibilities of the health and human services agency relating to the provision of transportation services for clients of eligible programs.

(d) The department may contract with any public or private transportation provider or with any regional transportation broker for the provision of public transportation services.

SECTION \_\_\_\_ .03. Section 455.004, Transportation Code, is amended to read as follows:

Sec. 455.004. PUBLIC TRANSPORTATION ADVISORY COMMITTEE. (a) A public transportation advisory committee consisting of nine members shall:

(1) advise the commission on the needs and problems of the state's public transportation providers, including the methods for allocating state public transportation money;

(2) comment on rules involving public transportation during development of the rules and before the commission finally adopts the rules unless an emergency requires immediate commission action; ~~and~~

(3) advise the commission on the implementation of Chapter 461; and

(4) perform any other duty determined by the commission.

(b) The commission shall appoint members of the advisory committee. The membership of the committee shall ~~governor, the lieutenant governor, and the speaker of the house of representatives each shall appoint three members of the committee. The appointing officers shall allocate among themselves the authority for appointment of members with different types of qualifications. The committee must~~ include:

(1) four members who ~~one member to~~ represent a diverse cross-section of public transportation providers ~~in rural areas~~;

(2) three members who ~~one member to~~ represent a diverse cross-section of transportation users ~~municipal transit systems in urban areas with populations of less than 200,000~~; and

(3) two members who ~~one member to represent metropolitan transit authorities in urban areas with populations of 200,000 or more;~~

~~[(4) one member to represent transportation providers for persons with disabilities and the elderly; and~~

~~[(5) five members who have a knowledge of and interest in public transportation to] represent the general public.~~

(c) A member serves at the pleasure of the commission ~~officer appointing the member~~. A member is not entitled to compensation for service on the committee but is entitled to reimbursement for reasonable expenses the member incurs in performing committee duties.

(d) The public transportation advisory committee shall meet ~~quarterly or~~ as requested by the commission.

(e) The commission may adopt rules to govern the operation of the advisory committee.

SECTION \_\_\_\_\_.04. Section 461.012, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) The commission shall contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the commission relating to the provision of transportation services for clients of eligible programs.

SECTION \_\_\_\_\_.05. Section 533.012, Health and Safety Code, is amended to read as follows:

Sec. 533.012. COOPERATION OF STATE AGENCIES. (a) At the department's request, all state departments, agencies, officers, and employees shall cooperate with the department in activities that are consistent with their functions.

(b) The department shall contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the department relating to the provision of transportation services for clients of eligible programs.

SECTION \_\_\_\_ .06. Section 22.001, Human Resources Code, is amended by adding Subsection (e) to read as follows:

(e) The department shall contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the department relating to the provision of transportation services for clients of eligible programs.

SECTION \_\_\_\_ .07. Section 40.002, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) The department may contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the department relating to the provision of transportation services for clients of eligible programs.

SECTION \_\_\_\_ .08. Section 91.021, Human Resources Code, is amended by adding Subsection (g) to read as follows:

(g) The commission shall contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the commission relating to the provision of transportation services for clients of eligible programs.

SECTION \_\_\_\_ .09. Section 101.0256, Human Resources Code, is amended to read as follows:

Sec. 101.0256. COORDINATED ACCESS TO LOCAL SERVICES. (a) The department and the Texas Department of Human Services shall develop standardized assessment procedures to share information on common clients served in a similar service region.

(b) The department shall contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the department relating to the provision of transportation services for clients of eligible programs.

SECTION \_\_\_\_ .10. Section 111.0525, Human Resources Code, is amended by adding Subsection (d) to read as follows:

(d) The commission shall contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the commission relating to the provision of transportation services for clients of eligible programs.

SECTION \_\_\_\_ .11. Section 301.063, Labor Code, is amended by adding Subsection (f) to read as follows:

(f) The commission shall contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the commission relating to the provision of transportation services for clients of eligible programs.

SECTION \_\_\_\_ .12. LEGISLATIVE INTENT REGARDING PROVISION OF HEALTH AND HUMAN SERVICE TRANSPORTATION THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION. It is the intent of the legislature that the provision of health and human service transportation through the Texas Department of Transportation will improve the delivery of transportation services to clients and enhance their access to transportation services. Furthermore, it is the intent of the

legislature that these services be provided in a manner that will generate efficiencies in operation, control costs, and permit increased levels of service. The Texas Department of Transportation shall encourage cooperation and coordination among transportation providers, regional transportation brokers, and actual and potential clients in an effort to achieve the stated legislative goals.

SECTION \_\_\_\_ .13. Any funds that are used by the Texas Department of Transportation to implement the transportation services provided in Sections 15.02, 15.04, 15.05, 15.06, 15.07, 15.08, 15.09, 15.10, and 15.11 shall be accounted for and budgeted separately from other funds appropriated to the Texas Department of Transportation for any other public transportation program or budget strategy.

(38) In SECTION 2.01 of the bill, in proposed Section 370.002, Transportation Code (on page 9, between lines 61 and 62), insert the following subdivision:

(8-A) "Intermodal hub" means a central location where cargo containers can be easily and quickly transferred between trucks, trains, and airplanes.

(39) In SECTION 2.01 of the bill, in proposed Section 370.002(13), Transportation Code (on page 10, between lines 27 and 28), insert the following paragraphs and reletter subsequent paragraphs accordingly:

(F) an intermodal hub;

(G) an automated conveyor belt for the movement of freight;

(H) a border crossing inspection station;

(40) In SECTION 2.01 of the bill, in proposed Subchapter E, Chapter 370, Transportation Code (on page 23, between lines 44 and 45), insert:

Sec. 370.186. COMMERCIAL TRANSPORTATION PROCESSING SYSTEMS. (a) In this section, "port of entry" means a place designated by executive order of the president of the United States, by order of the United States secretary of the treasury, or by act of the United States Congress at which a customs officer is authorized to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws.

(b) This section applies only to a port of entry for land traffic from the United Mexican States and does not apply to a port of entry for marine traffic.

(c) To the extent an authority considers appropriate to expedite commerce and based on the Texas ITS/CVO Business Plan prepared by the department, the Department of Public Safety, and the comptroller, the authority shall provide for implementation by the appropriate agencies of the use of Intelligent Transportation Systems for Commercial Vehicle Operations (ITS/CVO) in any new commercial motor vehicle inspection facility constructed by the authority and in any existing facility located at a port of entry to which this section applies. The authority shall coordinate with other state and federal transportation officials to develop interoperability standards for the systems.

(d) If an authority constructs a facility at which commercial vehicle safety inspections are conducted, the facility may not be used solely for the purpose of conducting commercial motor vehicle inspections by the Department of Public Safety and the facility must include implementation of ITS/CVO technology by the appropriate agencies to support all commercial motor vehicle regulation and enforcement functions.

(e) As part of its implementation of technology under this section, an authority shall to the greatest extent possible as a requirement of the construction of the facility:

(1) enhance efficiency and reduce complexity for motor carriers by providing a single point of contact between carriers and regulating state and federal government officials and providing a single point of information, available to wireless access, about federal and state regulatory and enforcement requirements;

(2) prevent duplication of state and federal procedures and locations for regulatory and enforcement activities, including consolidation of collection of applicable fees;

(3) link information systems of the authority, the department, the Department of Public Safety, the comptroller, and, to the extent possible, the United States Department of Transportation and other appropriate regulatory and enforcement entities; and

(4) take other necessary action to:

(A) facilitate the flow of commerce;

(B) assist federal interdiction efforts;

(C) protect the environment by reducing idling time of commercial motor vehicles at the facilities;

(D) prevent highway damage caused by overweight commercial motor vehicles; and

(E) seek federal funds to assist in the implementation of this section.

(f) Construction of a facility to which this section applies is subject to the availability of federal funding for that purpose.

(41) In SECTION 2.01 of the bill, between proposed Subchapters E and F, Chapter 370, Transportation Code (on page 23, line 45), strike "370.186" and substitute "370.187".

(42) In SECTION 2.01 of the bill, strike proposed Section 370.161, Transportation Code (page 16, lines 60-62), and substitute:

Sec. 370.161. TRANSPORTATION PROJECTS EXTENDING INTO OTHER COUNTIES. An authority may acquire, construct, operate, maintain, expand, or extend a transportation project only in:

(1) a county that is a part of the authority;

(2) a county in this state that is not a part of the authority if:

(A) the transportation project in that county is a continuation of a transportation project of the authority extending from a county adjacent to that county;

(B) the county is given an opportunity to become part of the authority on terms and conditions acceptable to the authority and that county; and

(C) the commissioners court of the county agrees to the proposed acquisition, construction, operation, maintenance, expansion, or extension of the transportation project in that county; or

(3) a county in another state or the United Mexican States if:

(A) each governing body of a political subdivision in which the project will be located agrees to the proposed acquisition, construction, operation, maintenance, expansion, or extension;

(B) the project will bring significant benefits to the counties in this state that are part of the authority;

(C) the county in the other state is adjacent to a county that is:

(i) part of the authority constructing, operating, maintaining, expanding, or extending the transportation project; and

(ii) has a municipality with a population of 500,000 or more; and

(D) the governor approves the proposed acquisition, construction, operation, maintenance, expansion, or extension.

(43) In SECTION 2.01 of the bill, in proposed Section 370.031, Transportation Code (page 11, between lines 17 and 18), insert the following:

(c) A municipality that borders the United Mexican States and has a population of 500,000 or more has the same authority as a county to create and participate in an authority. A municipality creating or participating in an authority has the same powers and duties as a county participating in an authority, the governing body of the municipality has the same powers and duties as the commissioners court of a county participating in an authority, and an elected member of the municipality's governing body has the same powers and duties as a commissioner of a county that is participating in an authority.

(44) In SECTION 2.01 of the bill, in proposed Section 371.002, Transportation Code (page 10, between lines 31 and 32), insert the following:

(13-a) "Transportation project" does not include the management, operation, or oversight of a rapid transit authority created under Chapter 451 unless the commissioner or the commissioner's designee has entered into a written agreement with the transit authority specifying the terms and conditions under which the transit authority may participate.

(45) In SECTION 1.01 of the bill, in proposed Section 227.003(c), Transportation Code (page 2, line 13), strike "451 or 452" and substitute "451, 452, or 460".

(46) In SECTION 2.01 of the bill, in proposed Section 370.031(b), Transportation Code (page 11, line 17), between "Subsection (a)" and the period insert "and the approval of the commissioners court of each county that will be a part of the authority".

(47) In SECTION 2.01 of the bill, strike proposed Section 370.181, Transportation Code (page 22, lines 41-52), and substitute:

Sec. 370.181. CONTRACTS WITH GOVERNMENTAL ENTITIES. (a) An authority may not construct, maintain, or operate a turnpike or toll project in an area having a governmental entity established under Chapter 284 or 366 unless the governmental entity and the authority enter into a written agreement specifying the terms and conditions under which the project shall be undertaken. An authority may not construct, maintain, or operate a transportation project that another governmental entity has determined to be a project under Chapter 451, 452, or 460 unless the governmental entity and the authority enter into a written agreement specifying the terms and conditions under which the project shall be undertaken.

(b) An authority may not receive or be paid revenue derived by another governmental entity operating under Chapter 284, 366, 451, 452, or 460 unless the governmental entity and the authority enter into a written agreement specifying the terms and conditions under which the revenue shall be received by or paid to the authority.



(48) In SECTION 2.01 of the bill, strike proposed Section 370.185, Transportation Code (page 23, lines 36-44), and substitute:

Sec. 370.185. PROPERTY OF CERTAIN TRANSPORTATION AUTHORITIES. An authority may not condemn or purchase real property of a transportation authority operating under Chapter 451, 452, or 460 unless the authority has entered into a written agreement with the transportation authority specifying the terms and conditions under which the condemnation or the purchase of the real property will take place.

(49) In SECTION 6.02 of the bill, in proposed Section 91.037, Transportation Code (page 32, line 34), strike "451 or 452" and substitute "451, 452, or 460".

(50) In SECTION 8.01, in amended Section 45.051(c), Code of Criminal Procedure (page 40, lines 59-62), strike "Other than an offense under Section 545.413, Transportation Code, this subsection does not apply to an offense involving the operation of a motor vehicle."

(51) In SECTION 8.01, strike proposed Article 45.01(c-1), Code of Criminal Procedure (page 40, lines 63-69).

(52) In SECTION 8.02, strike proposed Article 45.0511(l), Code of Criminal Procedure (page 43, lines 12-26), and substitute:

(l) When a defendant ~~[person]~~ complies with Subsection (c) ~~[(b) and a uniform certificate of course completion is accepted by the court]~~, the court shall:

(1) ~~[remove the judgment and dismiss the charge;~~

~~[(2)]~~ report the fact that the defendant ~~[person]~~ successfully completed a driving safety course or a motorcycle operator training course and the date of completion to the Texas Department of Public Safety for inclusion in the person's driving record; and

~~(2)~~ ~~[(3)]~~ state in that ~~[this]~~ report whether the course was taken under ~~[the procedure provided by]~~ this article to provide information necessary to determine eligibility to take a subsequent course under Subsection (b).

(53) In SECTION 9.01, in proposed Section 521.292(c), Transportation Code (page 44, lines 32 and 33), strike "of guilt under Articles 45.051(c-1) and 45.0511(l)(1)" and substitute "an adjudication under Article 45.051 or 45.0511".

(54) In SECTION 10.04, in amended Section 543.202(b)(7), Transportation Code (page 47, line 5), strike "45.051(c-1) or 45.0511(l)(1)" and substitute "45.0511".

(55) Add the following appropriately numbered ARTICLE and renumber ARTICLES accordingly:

ARTICLE \_\_\_\_ . CONDITIONAL GRANT PROGRAM

SECTION \_\_\_\_ .01. Section 56.141(4), Education Code, is amended to read as follows:

(4) "Eligible profession" means the profession of engineering or another profession as defined ~~[identified]~~ by ~~[the]~~ department rule for which the department determines there is a need ~~[as having a significant statistical underrepresentation of minorities or women]~~ in the department's workforce.

SECTION \_\_\_\_ .02. Section 56.142(a), Education Code, is amended to read as follows:

(a) The department shall establish and administer a conditional grant program under this subchapter to provide financial assistance to eligible [~~women and minority~~] students who agree to work for the department in an eligible profession for the two academic years immediately following the date of the student's receipt of an eligible degree.

SECTION \_\_\_\_ .03. Section 56.143, Education Code, is amended to read as follows:

Sec. 56.143. ELIGIBLE STUDENT. (a) To be eligible for a conditional grant under this subchapter, a student must:

(1) complete and file with the department, on forms prescribed by the department, a conditional grant application and a declaration of intent to become a member of an eligible profession and work for the department for the two academic years immediately following the date of the student's receipt of an eligible degree;

(2) enroll in an institution;

(3) be a Texas resident, as defined by Texas Higher Education Coordinating Board rule;

(4) be economically disadvantaged [~~a minority~~], as defined by department rule[, ~~or a woman~~]; and

(5) have complied with any other requirements adopted by the department under this subchapter.

(b) In determining who should receive a grant under this program, the department:

(1) shall give highest priority to students who demonstrate the greatest financial need; and

(2) may consider whether the applicant would be the first generation of the applicant's family to attend or graduate from an undergraduate program or from a graduate or professional program.

SECTION \_\_\_\_ .04. Section 56.147, Education Code, is amended by reenacting and amending Subsection (b), as amended by Chapters 151 and 165, Acts of the 74th Legislature, Regular Session, 1995, and by adding Subsection (c) to read as follows:

(b) The department shall issue not less than \$400,000 annually in conditional grants under this subchapter from money available to fund the conditional grant program [~~gifts, grants, and funds described by Subsection (a)~~].

(c) The department may provide outreach programs to recruit students into the conditional grant program.

SECTION \_\_\_\_ .05. The change in law made by this article does not affect the eligibility of a person awarded a grant under Subchapter I, Chapter 56, Education Code, before the effective date of this article to receive the grant or to participate in the conditional grant program under Subchapter I, Chapter 56, Education Code, as that subchapter existed when the person was awarded the grant, and the former law is continued in effect for that purpose.

(56) In SECTION 4.01 of the bill, between added Sections 91.036 and 91.037, Transportation Code (page 32, between lines 30 and 31), insert the following:

Sec. 91.0361. CERTAIN FREIGHT RAILROAD PROJECTS. (a) If sufficient funds from bonds sold to construct the Central Texas turnpike project or from the Texas mobility fund are available, the department may, and is strongly encouraged to,

use the funds for engineering, design, grading, and construction necessary to create a grade-separated freight rail line capable of being safely traveled by trains operating at not less than 80 miles per hour in or adjacent to the State Highway 130 corridor.

(b) The department may, and is strongly encouraged to, enter into negotiations with any Class I railroad concerning building and operating a freight railroad in or adjacent to the State Highway 130 corridor. The department may explore with any Class I railroad the possibility of operating the freight railroad line in or adjacent to the State Highway 130 corridor as a revenue-producing partnership that could benefit this state and the current holders of bonds used in the financing of State Highway 130.

(c) This amendment may not be construed to allow any delay in the current published schedule for the construction and completion of State Highway 130.

(57) In SECTION 11.04 of the bill, in proposed Section 152.123(b)(1), Tax Code (page 48, line 48), strike "2005" and substitute "2006" and renumber the years in Subdivisions (2)-(10) accordingly.

(58) In SECTION 11.05 of the bill, in amended Section 502.102(b)(3), Transportation Code (page 49, line 2), strike "the amount retained" and substitute "an additional amount of fees equal to the amount calculated".

(59) In SECTION 11.06 of the bill, in the heading to proposed Section 502.1025, Transportation Code (page 49, line 11), strike "ADDITIONAL" and substitute "CALCULATION OF ADDITIONAL FEE".

(60) In SECTION 11.06 of the bill, in proposed Section 502.1025(b), Transportation Code (page 49, line 22), between "retain" and "the" insert "under 502.102(b) fees based on".

(61) In SECTION 11.06 of the bill, in proposed Section 502.1025(b)(1), Transportation Code (page 49, line 25), strike "2005" and substitute "2006" and renumber the years in Subdivisions (2)-(10) accordingly.

(62) Following SECTION 11.07 (page 49, between lines 47 and 48), insert the following appropriately numbered section:

SECTION \_\_\_\_\_. Sections 11.04, 11.05, 11.06, and 11.07 of this Article take effect September 1, 2005.

The floor amendment was read.

Senator Lindsay offered the following amendment to the amendment:

### **Floor Amendment No. 2A**

Amend Floor Amendment No. 2 to **CSHB 3588** as follows:

(1) In SECTION 1.01 of the bill, in proposed Section 227.041, Transportation Code (page \_\_\_\_, line \_\_\_\_), insert the following and renumber subsequent sections accordingly:

(e) Section 25.1032(c), Government Code, is amended by adding Subsection (m) as follows:

(m) Notwithstanding any other provision of law, a party initiating a condemnation proceeding in Harris County may file the petition with any clerk authorized to handle such filings for the District Courts or County Civil Courts at Law.

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

Question recurring on the adoption of Floor Amendment No. 2 as amended, the amendment as amended was adopted without objection.

Senator Ogden offered the following amendment to the bill:

### **Floor Amendment No. 3**

Amend **CSHB 3588** (committee printing) on page 35, line 56 by striking "\$10 billion." and substituting "\$5 billion." and on page 36, line 18 by striking "\$2 billion" and substituting "\$1 billion".

The floor amendment was read and was adopted without objection.

Senator Ogden offered the following amendment to the bill:

### **Floor Amendment No. 4**

"( ) Amend **CSHB 3588** by adding the following appropriately numbered Section and renumbering subsequent Sections appropriately:

'SECTION \_\_\_\_\_. (a) Notwithstanding Section 780.002(b), Health and Safety Code, of the money allocated to the undedicated portion of the general revenue fund by Section 780.002(a), Health and Safety Code, other than money that may only be appropriated to the Department of Public Safety, in fiscal years 2004 and 2005 the comptroller shall deposit that money to the credit of the Texas mobility fund instead of to the credit of the general revenue fund.

(b) Notwithstanding Section 542.4031(g)(1), Transportation Code, of the money allocated to the undedicated portion of the general revenue fund in Section 542.4031(g)(1), Transportation Code, in fiscal years 2004 and 2005 the comptroller shall deposit that money to the credit of the Texas mobility fund instead of to the credit of the general revenue fund.

(c) Notwithstanding Sections 521.058, 521.313, 521.3466, 521.427, 522.029, 524.051, 548.508, 644.153, and 724.046, Transportation Code, to the extent that those sections allocate funds to the Texas mobility fund, in fiscal years 2004 and 2005 the comptroller shall deposit those funds to the credit of the general revenue fund instead of to the credit of the Texas mobility fund.'"

The amendment was read and was adopted without objection.

Senator Ogden offered the following amendment to the bill:

### **Floor Amendment No. 5**

Amend **CSHB 3588** as follows:

In ARTICLE 1, SECTION 1.01, added Section 227.062, Transportation Code (committee printing page 7, between lines 24 and 25), add the following Subsection (g):

"(g) The commission may not disburse money from the state highway fund that is dedicated under Section 7-a and 7-b, Article VIII, Texas Constitution, for activities on the Trans-Texas Corridor if as a result, the amount expended each year from those funds on the addition of capacity to the state highway system would be less than the

average annual expenditure from those funds for the addition of capacity to the state highway system over the previous five years. This subsection does not apply to past expenditures for activities on the Trans-Texas Corridor."

The floor amendment was read and was adopted without objection.

Senator Ogden offered the following amendment to the bill:

### **Floor Amendment No. 6**

Amend **CSHB 3588** as follows:

(1) In ARTICLE 1, SECTION 1.01, added Section 227.062(b)(2), Transportation Code (committee printing page 6, line 60), insert ", if those proceeds are" between "facility" and "deposited".

(2) In ARTICLE 1, SECTION 1.01, added Section 227.062(b)(3), Transportation Code (committee printing page 6, line 62), insert ", if that revenue is" between "facility" and "deposited".

(3) In ARTICLE 1, SECTION 1.01, added Section 227.063(a), Transportation Code (committee printing page 7, line 30), insert ", including the ability to deposit the proceeds of bonds or other obligations and to pledge, encumber, and expend such proceeds and revenues as provided in Chapter 361" between "project" and the period.

(4) In ARTICLE 1, SECTION 1.01, added Section 227.063(b), Transportation Code (committee printing page 7, between lines 36 and 37) insert the following subdivision and renumber subsequent subdivisions accordingly:

"(2) maintain separate accounts for bond proceeds and the revenues of a facility or system, and pledge those revenues and proceeds to the payment of bonds or other obligations issued or entered into with respect to the facility or system;".

(5) In ARTICLE 1, SECTION 1.01, added Section 227.063, Transportation Code (committee printing page 7, between lines 46 and 47), add the following subsection:

"(d) The proceeds of bonds issued under this chapter may be held in trust by a banking institution chosen by the department or, at the discretion of the department, in trust in the state treasury outside the general revenue fund and the state highway fund."

(6) In ARTICLE 1, SECTION 1.01, added Section 227.083, Transportation Code, (committee printing page 8, line 52), insert "or deposited to a separate account under this chapter," between the comma and "revenue".

(7) In ARTICLE 2, SECTION 2.01, added Section 370.033(3)(B), Transportation Code (committee printing page 11, lines 63 and 64), strike "statewide transportation program and the statewide transportation improvement plan" and substitute "statewide transportation plan and the statewide transportation improvement program".

(8) In ARTICLE 2, SECTION 2.01, added Section 370.035(f) (committee printing page 13, line 45), strike "turnpike project" and substitute "segment of highway".

(9) In ARTICLE 2, SECTION 2.01, added Section 370.168(g)(1), Transportation Code (committee printing page 19, line 33), strike "department's" and substitute "authority's".

(10) In ARTICLE 4, SECTION 4.01, added Section 91.072(a), Transportation Code (committee printing page 33, line 26), insert "including the ability to deposit the proceeds of bonds or other obligations and to pledge, encumber, and expend such proceeds and revenues as provided in Chapter 361" between "project" and the period.

(11) In ARTICLE 4, SECTION 4.01, added Section 91.072(b), Transportation Code (committee printing page 33, between lines 31 and 32) insert the following subdivision and renumber the subsequent subdivisions accordingly:

"(2) maintain separate accounts for bond proceeds and the revenues of a rail facility or system, and pledge those revenues and proceeds to the payment of bonds or other obligations issued or entered into with respect to the facility or system;".

(12) In ARTICLE 7, SECTION 7.01, added Section 284.009(e), Transportation Code (committee printing page 38, line 20), strike "(a)(2)" and substitute "(a)(3)".

(13) In ARTICLE 12, SECTION 12.01 (committee printing page 49, line 50), strike "Subsection (c)" and substitute "Subsections (c) and (d)".

The floor amendment was read and was adopted without objection.

Senator Ogden offered the following amendment to the bill:

**Floor Amendment No. 7**

Amend **CSHB 3588**, (committee printing) by striking Articles 8 and 9.

The floor amendment was read and was adopted without objection.

Senator Barrientos offered the following amendment to the bill:

**Floor Amendment No. 8**

Amend **CSHB 3588**, on page 50, lines 8-27, by striking subsections (d)-(f).

The floor amendment was read and was adopted without objection.

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

**CSHB 3588** as amended was passed to third reading by a viva voce vote.

**SENATE BILL 14 WITH HOUSE AMENDMENTS**

Senator Jackson called **SB 14** from the President's table for consideration of the House amendments to the bill.

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

**Amendment**

Amend **SB 14** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the regulation of residential property and commercial and personal automobile insurance; providing a criminal penalty.

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

ARTICLE 1. RATE REQUIREMENTS

PART A. RATE FILINGS

SECTION 1.01. Chapter 5, Insurance Code, is amended by adding Subchapter Q to read as follows:

SUBCHAPTER Q. RATES FOR CERTAIN LINES

Art. 5.142. RATES FOR PERSONAL AUTOMOBILE INSURANCE  
COVERAGE AND RESIDENTIAL PROPERTY INSURANCE COVERAGE

Sec. 1. SCOPE; PURPOSE. (a) This article governs the regulation of rates for personal automobile insurance and residential property insurance.

(b) The purposes of this article are to:

(1) promote the public welfare by regulating personal automobile insurance rates and residential property insurance rates to prohibit excessive, inadequate, unreasonable, or unfairly discriminatory rates;

(2) promote the availability of personal automobile and residential property insurance;

(3) promote price competition among insurers to provide rates and premiums that are responsive to competitive market conditions; and

(4) prohibit price-fixing agreements and other anticompetitive behavior by insurers.

Sec. 2. DEFINITIONS. (a) In this article:

(1) "Advisory organization" means an organization licensed under Article 5.73 of this code.

(2) "Classification" means the grouping of risks with similar risk characteristics so that differences in expected costs may be appropriately recognized.

(3) "Disallowed expenses" includes:

(A) administrative expenses, not including acquisition, loss control, and safety engineering expenses, that exceed 110 percent of the industry median for those expenses;

(B) lobbying expenses;

(C) advertising expenses, other than for advertising:

(i) directly related to the services or products provided by the insurer; or

(ii) designed and directed at loss prevention;

(D) amounts paid by an insurer:

(i) as damages in an action brought against the insurer for bad faith, fraud, or any matters other than payment under the insurance contract; or

(ii) as fees, fines, penalties, or exemplary damages for a civil or criminal violation of law;

(E) contributions to:

(i) social, religious, political, or fraternal organizations; or

(ii) organizations engaged in legislative advocacy;

(F) except as authorized by rule by the commissioner, fees and assessments paid to advisory organizations; and

(G) any unreasonably incurred expenses, as determined by the commissioner after notice and hearing.

(4) "Filer" means an insurer that files rates, supplementary rating information, supporting information, rating manuals, or any other information required to be filed under this article.

(5) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company except as provided by Section 13, Article 5.13-2, of this code, Lloyd's plan, or other legal entity authorized to write personal automobile insurance or residential property insurance in this state. The term includes an affiliate, as described by this code, if that affiliate is authorized to write personal automobile insurance or residential property insurance. The term does not include:

(A) the Texas Windstorm Insurance Association under Article 21.49 of this code;

(B) the FAIR Plan Association under Article 21.49A of this code;

(C) the Texas Automobile Insurance Plan Association under Article 21.81 of this code; or

(D) an insurer that is not engaged in the business of personal automobile insurance or residential property insurance in this state before the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003.

(6) "Line" means a type of insurance subject to this article.

(7) "Personal automobile insurance" means motor vehicle insurance coverage for the ownership, maintenance, or use of a private passenger, utility, or miscellaneous type motor vehicle, including a motor home, trailer, or recreational vehicle, that is:

(A) owned or leased by an individual or individuals; and

(B) not primarily used for the delivery of goods, materials, or services, other than for use in farm or ranch operations.

(8) "Rate" means the cost of insurance per exposure unit, whether expressed as a single number or as a prospective loss cost, with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, and before any application of individual risk variations based on loss or expense considerations.

(9) "Rating manual" means a publication or schedule that lists rules, classifications, territory codes and descriptions, rates, premiums, and other similar information used by an insurer to determine the applicable premium charged an insured for personal automobile insurance or residential property insurance.

(10) "Residential property insurance" means insurance coverage against loss to real or tangible personal property at a fixed location that is provided through a homeowners policy, including a tenants policy, a condominium owners policy, or a residential fire and allied lines policy.

(11) "Supplementary rating information" means any manual, rating schedule, plan of rules, rating rules, classification systems, territory codes and descriptions, rating plans, and other similar information used by the insurer to determine the applicable premium for an insured. The term includes factors and relativities, including increased limits factors, classification relativities, deductible relativities, premium discount, and other similar factors and rating plans, including experience, schedule, and retrospective rating.



(12) "Supporting information" means:

(A) the experience and judgment of the filer and the experience or information of advisory organizations or other insurers relied on by the filer;

(B) the interpretation of any other information relied on by the filer;

(C) descriptions of methods used in making the rates; and

(D) any other information required by the commissioner by rule to be filed.

(b) For purposes of this subchapter, a rate is:

(1) excessive if the rate is likely to produce a long-term profit that is unreasonably high in relation to the insurance coverage provided;

(2) inadequate if the rate is insufficient to sustain projected losses and expenses to which the rate applies, and continued use of the rate:

(A) endangers the solvency of an insurer using the rate; or

(B) has the effect of substantially lessening competition or creating a monopoly within any market; or

(3) unfairly discriminatory if the rate:

(A) cannot be actuarially justified;

(B) does not bear a reasonable relationship to the expected loss and expense experience among risks; or

(C) is based in whole or in part on the race, creed, color, ethnicity, or national origin of the policyholder or an insured.

Sec. 3. RATING CRITERIA. (a) An insurer shall set rates for each line in accordance with this section.

(b) In setting rates, an insurer shall consider:

(1) past and prospective loss experience inside this state, and outside this state if the state data are not credible;

(2) the peculiar hazards and experiences of individual risks, past and prospective, inside and outside this state;

(3) the insurer's actuarially credible historical premium, exposure, loss, and expense experience;

(4) catastrophe hazards within this state;

(5) operating expenses, excluding disallowed expenses;

(6) investment income;

(7) a reasonable margin for profit; and

(8) any other factors inside and outside this state determined to be relevant by the insurer and not disallowed by the commissioner.

(c) An insurer may:

(1) group risks by classification for the establishment of rates and minimum premiums; and

(2) modify classification rates to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in those risks on the basis of any factor listed in Subsection (b) of this section.

(d) Rates established under this section may not be excessive, inadequate, unreasonable, or unfairly discriminatory for the risks to which they apply.

(e) In setting rates applicable solely to policyholders in this state, an insurer shall use its own historical premium and loss data, as well as its own data for expenses and for profit and contingency factors. The commissioner may require an audit of the insurer's historical premium and loss data. The insurer may separately supplement its own historical premium and loss data with industry-wide historical premium and loss data from this state as necessary. The commissioner by rule may establish requirements for reporting historical premium and loss data under this subsection.

(f) In determining a rating territory, an insurer shall use methods based on sound actuarial principles.

Sec. 4. RATE FILINGS. (a) An insurer shall file with the department all rates, applicable rating manuals, supplementary rating information, and additional information on an annual basis as required by the commissioner for risks written in this state.

(b) The commissioner by rule shall determine the information required to be provided in the filing, including:

(1) the categories of supporting information;

(2) the categories of supplementary rating information;

(3) any statistics or other information to support the rates to be used by the insurer, including information necessary to evidence that the computation of the rate does not include disallowed expenses; and

(4) information concerning policy fees, service fees, and other fees that are charged or collected by the insurer under Article 21.35A or 21.35B of this code.

(c) The insurer shall file with each rate filing a certificate by an officer of the insurer that all rate classifications, the rates applicable to those classifications, and the risk factors to which those classifications apply are based on reasonably sound and verifiable actuarial principles and that no classifications are unfairly discriminatory as to race, color, religion, ethnicity, or national origin.

(d) Other than the annual rate filings required under Subsection (a) of this section, the commissioner may require an insurer to file with the department all rates, applicable rating manuals, supplementary rating information, and additional information required under Subsections (b) and (c) of this section:

(1) on using a new policy form that has been approved by the commissioner for a line of insurance offered by the insurer;

(2) on changing the underwriting guidelines used by the insurer;

(3) if the commissioner receives a substantial number of consumer complaints, as determined by the commissioner, about an insurer's prices or practices;

(4) if the commissioner determines that there is a significant difference between the insurer's current loss trends and the insurer's prospective loss trends reported in the prior annual rate filing; or

(5) if the commissioner otherwise determines that good cause exists to review an insurer's rating information.

(e) Unless otherwise required by the commissioner, after an initial annual rate filing required under this section is approved by the commissioner, an insurer is not required to make subsequent annual filings if the rate to be used by the insurer is the same as the rate in effect.

(f) An insurer shall provide to the department in the manner prescribed by the commissioner information necessary to verify the information filed by the insurer under Subsection (c) of this section.

(g) The commissioner by rule shall establish what constitutes "good cause" for purposes of Subsection (d)(5) of this section.

(h) The commissioner may not require an insurer to file information that is not contained in the books and records kept by the insurer in the insurer's normal course of business.

Sec. 5. PRIOR APPROVAL REQUIRED. (a) Except as provided by Subsection (j) of this section, an insurer may not use a rate until the rate has been filed with the department and approved by the commissioner as provided by this section. For purposes of this section, a rate is filed with the department on the date the rate filing is received by the department.

(b) Not later than the 30th day after the date the rate is filed with the department, the commissioner shall:

(1) approve the rate if the commissioner determines that the rate complies with the requirements of this article; or

(2) disapprove the rate if the commissioner determines that the rate does not comply with the requirements of this article.

(c) Except as provided by Subsection (e) of this section or Section 9(c) of this article, if the rate has not been approved or disapproved by the commissioner before the expiration of the 30-day period described by Subsection (b) of this section, the rate is considered approved and the insurer may use the rate unless the rate proposed in the filing represents an increase of 12.5 percent or more from the insurer's prior filed and approved rate.

(d) The commissioner and the insurer may not by agreement extend the 30-day period described by Subsection (b) of this section.

(e) For good cause, the commissioner may extend the period for approval or disapproval of a rate for one additional 30-day period on the expiration of the 30-day period described by Subsection (b) of this section.

(f) If the department determines that the information filed by the insurer under this article is incomplete or otherwise deficient, the department, not later than the 10th day after the date the insurer files the rate with the department, may request additional information from the insurer. If the department requests additional information from the insurer during the first 30-day review period provided under Subsection (b) of this section or under the second 30-day review period provided under Subsection (e) of this section, the period of time between the date of the department's submission of the request for additional information to the insurer and the date of the receipt of the additional information by the department from the insurer is not counted to determine what constitutes the first 30-day review period or the second 30-day review period. For purposes of this subsection, the date of the department's submission of the request for additional information is the date of the electronic mailing or telephone call or the postmarked date on the department's letter relating to the request for additional information.

(g) The commissioner shall approve the rate filing if the proposed rate is adequate, not excessive, and not unfairly discriminatory.

(h) If the commissioner approves a rate filing, the commissioner shall provide written or electronic notification of the approval to the insurer. On receipt of the notice of the commissioner's approval of a rate, the insurer may use the rate.

(i) From the date of the filing of the rate with the department to the effective date of the new rate, the insurer's previously filed rate that is in effect on the date of the filing remains in effect.

(j) After approval of a rate filing under this section, an insurer may use any rate subsequently filed by the insurer, without prior approval of the commissioner, if the subsequently filed rate does not exceed the lesser of 107.5 percent of the rate approved by the commissioner or 110 percent of any rate used by the insurer within the previous 12-month period. Filed rates under this subsection take effect on the date specified by the insurer.

Sec. 6. DISAPPROVAL OF RATE. (a) The commissioner may disapprove a rate filed under this article if the commissioner determines that the rate does not meet the requirements of this article.

(b) If the commissioner disapproves a rate, the commissioner shall notify the insurer that made the rate filing and shall issue a disapproval order on the date the commissioner provides notice to the insurer. The notice to the insurer and the commissioner's disapproval order must specify how the rate fails to meet the requirements of this article. The commissioner may provide the notice electronically if a subsequent written notice is also provided. The order must state the date on which the further use of the disapproved rate is prohibited. The commissioner may specify in the order a rate that would be approved by the commissioner.

(c) An insurer may not use a rate in this state after disapproval of the rate by the commissioner.

(d) An insurer whose rate is disapproved under this section is not entitled to a hearing before the commissioner's disapproval order is issued.

(e) After receiving notice of the commissioner's disapproval of the rate filed by the insurer, the insurer, not later than the 20th day after the date a disapproval order is issued under this section, may request:

(1) a rate hearing to be conducted by the State Office of Administrative Hearings; or

(2) a binding arbitration to be conducted by arbitrators selected in the manner described by Subsection (h) of this section.

(f) After completion of the rate hearing under Subsection (e)(1) of this section, the administrative law judge shall prepare a proposal for decision under Section 40.058 of this code and remand the case to the commissioner recommending:

(1) that the commissioner affirm the commissioner's order;

(2) additional review of the order by the commissioner to be completed not later than the 10th day after the date the commissioner receives the administrative law judge's proposal, that the parties enter into negotiations, or that the commissioner take other appropriate action with respect to the order within a time period specified by the administrative law judge;

(3) adoption of a temporary rate pending further review; or

(4) adoption of the rate filed by the insurer.

(g) An insurer requesting binding arbitration under Subsection (e)(2) of this section:

(1) waives the insurer's right to appeal the commissioner's disapproval of a filed rate beyond the binding arbitration; and

(2) shall pay the entire cost of the binding arbitration.

(h) Binding arbitration conducted under Subsection (e) of this section must be conducted by three arbitrators, one selected by the department, one selected by the insurer, and one agreed on by the arbitrators chosen by the department and the insurer. The three arbitrators shall reach a decision by considering a rate proposed by the insurer and a rate proposed by the department. The rate proposed by the department or by the insurer on which two of the three arbitrators agree shall be the insurer's effective rate.

(i) The office of public insurance counsel may participate in a hearing or binding arbitration conducted under this section and present evidence at the hearing or arbitration.

Sec. 7. BASIS FOR RATE APPROVAL. (a) In deciding whether to approve or disapprove a rate filing of an insurer under this article, the commissioner shall consider whether:

(1) the insurer's rate complies with the rating criteria adopted under Section 3 of this article;

(2) the insurer's underwriting guidelines are fair and not discriminatory;

(3) the insurer has applied credit scoring in accordance with Article 21.49-2U of this code; and

(4) any applicable management fees charged by the insurer comply with law and are not unreasonable or excessive under accepted regulatory standards.

(b) The insurer must itemize any applicable management fees charged by the insurer, including an analysis of each fee that states each component of the fee, and an itemization of profit-load.

Sec. 8. USE OF UNDERWRITING GUIDELINES AND RATING MANUALS. On approval of a rate filing by the commissioner under Section 5 of this article, and subject to Article 21.49-2V of this code, if applicable, an insurer may use the insurer's underwriting guidelines and rating manuals in preparing future rate filings as required under this article.

Sec. 9. EFFECT OF INSURER NONCOMPLIANCE. (a) If the commissioner determines that any of the information required under Section 4 of this article to be included in the rate filing has not been provided to the department by an insurer in the rate filing, the commissioner in writing shall notify the insurer:

(1) that the insurer is not in compliance with this article; and

(2) the date by which the insurer must provide the information not included in the rate filing.

(b) Unless the commissioner determines otherwise, the 30-day approval period described under Section 5(b) of this article does not begin until the date the commissioner determines that the insurer has filed a complete rate filing as required by this article. For purposes of this subsection, a rate filing is considered complete on the later of:

(1) the 11th day after the date an insurer files a rate with the department under this article; or

(2) the day the department receives all information requested under Section 5(f) of this article.

(c) Section 5(c) of this article does not apply to an insurer that:

(1) has violated this article, another law, or a rule adopted under this code relating to:

(A) rating information required to be provided by an insurer; or

(B) rates generally;

(2) has violated any law or rule adopted under this code relating to underwriting requirements; or

(3) has not complied with an order issued by the commissioner during the three years preceding the date of the rate filing required under this article.

(d) If a rate filed by an insurer described by Subsection (c) of this section has not been approved or disapproved by the commissioner before the expiration of the 30-day period described by Section 5(b) of this article, the rate is considered denied. An insurer may appeal the commissioner's disapproval of a rate under this subsection as provided by Section 6 of this article.

Sec. 10. PUBLIC INFORMATION. Subject to Section 552.110, Government Code, each rate filing and any supporting information filed under this article are public information and must be disclosed under Chapter 552, Government Code, as of the date the filing is received by the commissioner.

Sec. 11. CERTAIN USE OF FILED RATE INFORMATION. (a) Any information filed by an insurer with the department under this article may be disclosed to:

(1) individual members, agencies, or committees of the legislature; and

(2) an agency in the executive branch of state government or an employee of that agency.

(b) An individual member, agency, or committee of the legislature that receives information under Subsection (a)(1) of this section may use the information only for legislative purposes. An agency or employee of an agency that receives information under Subsection (a)(2) of this section may use the information only for the official purposes of the agency.

(c) Confidential information disclosed under this section remains confidential.

Sec. 12. SUPERVISION REQUIREMENT. If the commissioner determines after a hearing that an insurer's rates require supervision because of the insurer's financial condition or the insurer's rating practices, the commissioner may require the insurer to file with the commissioner all rates, supplementary rating information, and any supporting information prescribed by the commissioner.

Sec. 13. RIGHTS OF PUBLIC INSURANCE COUNSEL. (a) On request to the commissioner, the public insurance counsel may review all rate filings and additional information provided by an insurer under this article. Confidential information reviewed under this subsection remains confidential.

(b) The public insurance counsel, not later than the 30th day after the date of a rate filing under Section 5 of this article, may object to an insurer's rate filing or the criteria relied on by the insurer to determine the rate by filing a written objection with the commissioner. The written objection must contain the reasons for the objection.

Sec. 14. RATE HEARINGS; ADMINISTRATIVE PROCEDURES. Subject to Chapter 40 of this code, Chapter 2001, Government Code, applies to all hearings on rates conducted under this article. To the extent of any conflict between this article and Chapter 2001, Government Code, this article prevails.

Sec. 15. APPEAL. (a) An insurer or the public insurance counsel may, not later than the 30th day after the date the commissioner issues an order under this article, appeal the order in accordance with Subchapter D, Chapter 36, of this code.

(b) An insurer that appeals an order of the commissioner issued under this article shall pay all costs associated with the appeal, including any attorney's fees incurred by the department, if the insurer does not prevail on appeal.

Sec. 16. BURDEN OF PROOF. To prevail in a rate hearing under Section 14 of this article or an appeal under Section 15 of this article, an insurer must establish that the commissioner's order is an abuse of discretion.

Sec. 17. RULES. The commissioner shall adopt rules as necessary to implement this article.

Sec. 18. NOTICE TO POLICYHOLDER. (a) An insurer shall send to each holder of a policy of insurance subject to this article notice of any rate increase scheduled to take effect on the renewal of the policy that exceeds 10 percent of the amount paid by the policyholder for coverage under the policy immediately before renewal.

(b) The insurer shall send the notice required by Subsection (a) of this section before the renewal date but not later than the 30th day before the date the rate increase is scheduled to take effect.

Sec. 19. ADVISORY ORGANIZATIONS. (a) An advisory organization may file with the commissioner for use by insurers loss and loss adjustment expense information. An insurer that subscribes to the advisory organization may use information filed under this subsection after the information is approved by the commissioner.

(b) An advisory organization may not publish rates for insurance subject to this article.

#### Art. 5.143. EXCEPTIONS TO RATE FILING AND APPROVAL REQUIREMENTS

Sec. 1. DEFINITIONS. In this article:

(1) "Insurer" means a property and casualty insurer authorized to engage in the business of residential property insurance in this state. The term includes:

(A) a Lloyd's plan, a county mutual insurance company, and a reciprocal or interinsurance exchange; and

(B) the affiliate of an insurer, as described by this code.

(2) "Residential property insurance" includes:

(A) homeowners insurance; and

(B) residential fire and allied lines insurance.

Sec. 2. INSURER MARKET SHARE. An insurer with a market share of five percent or more that acquires an interest in an insurer with a smaller market share or that splits into smaller entities, to be owned in whole or in part by the insurer with the larger market share, is required to continue to file rates for all affected entities, as required by the commissioner under Section 3 of this article.

Sec. 3. EXEMPTION FROM CERTAIN FILING REQUIREMENTS. (a) On the request of an insurer, the commissioner may, in accordance with this article, partially or wholly exempt the insurer from:

(1) the requirement to file certain data with the department; and

(2) the rate approval requirements adopted under Article 5.142 of this code.

(b) An exemption under Subsection (a)(1) of this section does not apply to requirements that the insurer file its rates and its market capacity information with the department.

(c) An exemption granted under Subsection (a) may be limited to a specific period.

Sec. 4. REDUCED FILING—INSURER WITH MARKET SHARE OF FIVE PERCENT OR MORE. An insurer with a market share of five percent or more is subject to rate approval under Article 5.142 of this code. However, on request by the insurer, the commissioner may grant the insurer a partial reduction in the amount of data required to be filed with the department if:

(1) the commissioner has determined:

(A) that the filed rate represents an increase of not more than 7.5 percent of the rate previously approved for use by the insurer under this article; and

(B) that granting the reduced filing will not adversely affect consumers or the market; and

(2) the insurer certifies to the department, and the commissioner finds, that the insurer is in compliance with the requirements adopted under Section 6 of this article.

Sec. 5. REDUCED FILING—INSURER WITH MARKET SHARE OF LESS THAN FIVE PERCENT. (a) An insurer with a market share of less than five percent is subject to the rate filing requirements of Article 5.142 of this code. However, on request of the insurer, the commissioner may grant the insurer a partial or total reduction in the amount of supporting information required to be filed with the department or in the rate approval requirements imposed under Article 5.142 of this code if:

(1) the commissioner has determined that granting the request will not adversely affect consumers or the market; and

(2) the insurer certifies to the department, and the commissioner finds, that the insurer is in compliance with the requirements adopted under Section 6 of this article.

(b) An insurer subject to this section may file for an exemption under Subsection (a) of this section at any time.

Sec. 6. INSURER REQUIREMENTS. To be eligible for a reduction in rate filing or approval requirements under Section 4 or 5 of this article, an insurer:



(1) shall agree, through an enforceable contract entered into with the department, that the insurer will not leave the residential property insurance market in this state, or substantially reduce its market share in this state, before the first anniversary of the date of the agreement, without:

(A) the express approval of the commissioner; and

(B) the filing of a withdrawal plan that is satisfactory to the commissioner;

(2) shall certify that the insurer's average filed rates do not exceed the rates used by the insurer during the preceding year by the greater of:

(A) 7.5 percent; or

(B) 2.5 percent plus the established or projected cost-of-living increase for the preceding year, as determined by the commissioner;

(3) must have promptly responded to prior data requirements and requests from the department; and

(4) may not be subject to any contested disciplinary action by the department.

Sec. 7. REDUCED FILING—INSURER WITH MARKET SHARE OF LESS THAN ONE-HALF OF ONE PERCENT. (a) Subject to Section 5 of this article, an insurer that has a market share of less than one-half of one percent is subject to the rate filing requirements of Article 5.142 of this code, but may, on request to the commissioner, be exempted from any other specific filing for a period not to exceed three years from the date of the insurer's request if the commissioner:

(1) does not disapprove the rate filing made by the insurer; and

(2) determines that granting the request will not adversely affect consumers or the market.

(b) An insurer subject to this section may file for an exemption under Subsection (a) of this section at any time.

Sec. 8. EFFECT OF SURPLUS LINES COVERAGE. (a) An eligible surplus lines insurer is exempt from the rate filing and approval requirements adopted under Article 5.142 of this article except as provided by Subsection (b) of this section.

(b) An insurer affiliated with an eligible surplus lines insurer must add all surplus lines coverage written by the affiliate to the insurer's total writings to determine if the insurer's market share is five percent or more on a finding by the commissioner, after notice and opportunity for hearing, that the insurer is using the surplus lines affiliate to avoid rate regulation. If the five percent threshold is exceeded, all the insurer's rates, including rates for surplus lines coverage, are subject to the filing and approval requirements adopted under Article 5.142 of this article.

Sec. 9. RATE STANDARDS. (a) Rates otherwise exempt from regulation under the provisions of this article may not be excessive, inadequate, unreasonable, or unfairly discriminatory for the risks to which they apply.

(b) In determining a rating territory, an insurer shall use methods based on sound actuarial principles.

Sec. 10. FILING FROM INSURER BOOKS AND RECORDS. The commissioner may not require an insurer to file information that is not contained in the books and records kept by the insurer in the insurer's normal course of business.

## PART B. CONFORMING AMENDMENT

SECTION 1.02. Section 4C, Article 5.73, Insurance Code, is amended to read as follows:

Sec. 4C. Except as provided by Section 19, Article 5.142, of this code, an [An] insurer may not receive from an advisory organization prospective loss costs for personal automobile, homeowners', or dwelling fire insurance.

## PART C. TRANSITION

SECTION 1.03. An insurer that was not rate regulated before the effective date of Article 5.142, Insurance Code, as added by this article, may renew business in an affiliated company as necessary to comply with this article. Business renewed in an affiliated company is not considered nonrenewed business of the company from which the business is transferred.

SECTION 1.04. (a) Articles 5.142 and 5.143, Insurance Code, as added by this article, expire September 1, 2004.

(b) The expiration of Articles 5.142 and 5.143, Insurance Code, as added by this article, does not affect an action or proceeding against an insurer subject to those laws for a failure to comply with those laws before their expiration, regardless of when the action or proceeding is commenced, and those laws are continued in effect for this purpose.

ARTICLE 2. UNDERWRITING GUIDELINES AND  
REQUIREMENTS; USE OF CREDIT SCORING

SECTION 2.01. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.49-2U to read as follows:

Art. 21.49-2U. USE OF CREDIT SCORING IN CERTAIN PERSONAL LINES OF INSURANCE

Sec. 1. DEFINITIONS. In this article:

(1) "Adverse effect" means an action taken by an insurer in connection with the underwriting of insurance for a consumer that results in the denial of coverage, the cancellation or nonrenewal of coverage, or the offer to and acceptance by a consumer of a policy form, premium rate, or deductible other than the policy form, premium rate, or deductible for which the consumer specifically applied.

(2) "Agent" means a person licensed or required to be licensed as a general property and casualty insurance agent under Article 21.14 of this code.

(3) "Applicant for insurance coverage" means an individual who has applied to an insurer for coverage under a personal insurance policy.

(4) "Consumer" means an individual whose credit information is used or whose credit score is computed in the underwriting or rating of a personal insurance policy. The term includes an applicant for insurance coverage.

(5) "Consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(6) "Credit information" means any credit-related information derived from a credit report, found on a credit report itself, or provided in an application for personal insurance. The term does not include information that is not credit-related, regardless of whether that information is contained in a credit report or in an application for insurance coverage or is used to compute a credit score.

(7) "Credit report" means any written, oral, or other communication of information by a consumer reporting agency that:

(A) bears on a consumer's creditworthiness, credit standing, or credit capacity; and

(B) is used or expected to be used or collected in whole or in part to serve as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

(8) "Credit score" or "insurance score" means a number or rating derived from an algorithm, computer application, model, or other process that is based on credit information and used to predict the future insurance loss exposure of a consumer.

(9) "Insured" means a consumer who has purchased an insurance policy from an insurer.

(10) "Insurer" means an insurer authorized to write property and casualty insurance in this state, including an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, association, Lloyd's plan, or other entity writing personal insurance in this state. The term includes an affiliate, as described by this code, if that affiliate is authorized to write personal insurance in this state. The term does not include an eligible surplus lines insurer under this code.

(11) "Personal insurance" means:

(A) a personal automobile insurance policy;

(B) a residential property insurance policy;

(C) a residential fire and allied lines insurance policy; or

(D) a noncommercial insurance policy covering a boat, personal watercraft, snowmobile, or recreational vehicle.

Sec. 2. APPLICATION. This article applies to an insurer that writes personal insurance coverage and uses credit information or credit reports for the underwriting or rating of that coverage.

Sec. 3. PROHIBITED USE OF CREDIT INFORMATION. (a) An insurer may not:

(1) use a credit score that is computed using factors that constitute unfair discrimination, as that term is used under Article 21.21-6 of this code, as added by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995;

(2) deny, cancel, or nonrenew a policy of personal insurance solely on the basis of credit information without consideration of any other applicable underwriting factor independent of credit information; or

(3) take an action that results in an adverse effect against a consumer because the consumer does not have a credit card account without consideration of any other applicable factor independent of credit information.

(b) An insurer may not consider an absence of credit information or an inability to determine credit information for an applicant for insurance coverage or insured as a factor in underwriting or rating an insurance policy unless the insurer:

(1) has statistical, actuarial, or reasonable underwriting information that:  
(A) is reasonably related to actual or anticipated loss experience; and  
(B) shows that the absence of credit information could result in actual or anticipated loss differences;

(2) treats the consumer as if the applicant for insurance coverage or insured had neutral credit information, as defined by the insurer; or

(3) excludes the use of credit information as a factor in underwriting and uses only other underwriting criteria.

Sec. 4. NEGATIVE FACTORS. (a) An insurer may not use any of the following as a negative factor in any credit scoring methodology or in reviewing credit information to underwrite or rate a policy of personal insurance:

(1) a credit inquiry that is not initiated by the consumer;  
(2) an inquiry relating to insurance coverage, if so identified on a consumer's credit report; or

(3) a collection account with a medical industry code, if so identified on the consumer's credit report.

(b) Multiple lender inquiries made within 30 days of a prior inquiry, if coded by the consumer reporting agency on the consumer's credit report as from the home mortgage industry, shall be considered by an insurer as only one inquiry.

(c) Multiple lender inquiries made within 30 days of a prior inquiry, if coded by the consumer reporting agency on the consumer's credit report as from the motor vehicle lending industry, shall be considered by an insurer as only one inquiry.

Sec. 5. EFFECT OF EXTRAORDINARY EVENTS. (a) Notwithstanding any other law, an insurer shall, on written request from an applicant for insurance coverage or an insured, provide reasonable exceptions to the insurer's rates, rating classifications, or underwriting rules for a consumer whose credit information has been directly influenced by a catastrophic illness or injury, by the death of a spouse, child, or parent, by temporary loss of employment, or by identity theft. In such a case, the insurer may consider only credit information not affected by the event or shall assign a neutral credit score.

(b) An insurer may require reasonable written and independently verifiable documentation of the event and the effect of the event on the person's credit before granting an exception. An insurer is not required to consider repeated events or events the insurer reconsidered previously as an extraordinary event.

(c) An insurer may also consider granting an exception to an applicant for insurance coverage or an insured for an extraordinary event not listed in this section.

(d) An insurer is not out of compliance with any law or rule relating to underwriting, rating, or rate filing as a result of granting an exception under this article.

Sec. 6. DISPUTE RESOLUTION; ERROR CORRECTION. (a) If it is determined through the dispute resolution process established under Section 611(a)(5), Fair Credit Reporting Act (15 U.S.C. Section 1681i), as amended, that the credit information of a current insured was inaccurate or incomplete or could not be

verified and the insurer receives notice of that determination from the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the insured not later than the 30th day after the date of receipt of the notice.

(b) After re-underwriting or re-rating the insured, the insurer shall make any adjustments necessary within 30 days, consistent with the insurer's underwriting and rating guidelines. If an insurer determines that the insured has overpaid premium, the insurer shall credit the amount of overpayment. The insurer shall compute the overpayment back to the shorter of:

(1) the last 12 months of coverage; or

(2) the actual policy period.

Sec. 7. DISCLOSURE TO CONSUMERS FOR USE OF CREDIT SCORING.

(a) An insurer may use credit scoring to develop rates, rating classifications, or underwriting criteria regarding lines of insurance subject to this article except as prohibited by Article 21.21-6 of this code, as added by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995.

(b) An insurer that uses credit scoring in the underwriting or rating of insurance subject to this article shall disclose to each applicant for insurance coverage that the applicant's credit report may be used in the underwriting or rating of the applicant's policy. The disclosure must be provided at the time of application by the insurer or agent and may be given in writing or electronically.

(c) If a policy is issued to the applicant for insurance coverage, an insurer or agent is not required to make the disclosure required under Subsection (b) of this section on any subsequent renewal of the coverage.

(d) Use of the following sample disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit score based on the information contained in that credit report. We may use a third party in connection with the development of your credit score."

Sec. 8. NOTICE OF ACTION RESULTING IN ADVERSE EFFECT. (a) If an insurer takes an action resulting in an adverse effect with respect to an applicant for insurance coverage or insured based in whole or in part on information contained in a credit report, the insurer shall provide to the applicant or insured within 30 days:

(1) written or electronic notice of the action resulting in an adverse effect and the reasons for that action;

(2) the name, address, and telephone number of the consumer reporting agency, including a toll-free number established by the agency and the consumer reporting agency's Internet website, if applicable;

(3) written or electronic notice that the consumer reporting agency did not make the decision to take the action resulting in an adverse effect and will be unable to provide the applicant or insured the specific reasons why the action was taken; and

(4) written or electronic notice of the applicant's or insured's right to:

(A) obtain a free copy of the consumer report from the consumer reporting agency during the 60-day period after the date of the notice; and

(B) dispute with the consumer reporting agency the accuracy or completeness of any information in the consumer report furnished by the agency.

(b) The insurer shall include a description of not more than four factors that were the primary influences of the action resulting in the adverse effect.

(c) The use by the insurer of a generalized term such as "poor credit history," "poor credit rating," or "poor credit score" does not constitute sufficient notice under this section of the action resulting in the adverse effect.

(d) Standardized credit explanations provided by a consumer reporting agency or other third-party vendors are also sufficient to comply with this section.

Sec. 9. MANDATED FILING WITH DEPARTMENT. (a) An insurer that uses credit scores to underwrite and rate risks shall file within 90 days of the effective date of this article the insurer's scoring models or other credit scoring processes with the department. Another entity may file credit scoring models on behalf of an insurer. A filing that includes credit scoring may include loss experience justifying the use of credit information.

(b) A filing relating to credit information is a trade secret and is confidential for purposes of Chapter 552, Government Code.

Sec. 10. INDEMNIFICATION. (a) An insurer shall indemnify, defend, and hold its agent harmless from and against all liability, fees, and costs that arise out of or relate to the actions, errors, or omissions of an agent who obtains or uses credit information or credit scores for the insurer if the agent follows the instructions of or procedures established by the insurer and complies with any applicable law or rule.

(b) This section may not be construed to establish a cause of action that does not exist in the absence of this section.

Sec. 11. SALE OF POLICY TERM INFORMATION BY CONSUMER REPORTING AGENCY PROHIBITED. (a) A consumer reporting agency may not provide or sell data or lists that include any information that, in whole or in part, was submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or credit score, including:

(1) the expiration dates of an insurance policy or any other information that may identify periods during which a consumer's insurance may expire; and

(2) the terms and conditions of the consumer's insurance coverage.

(b) The restriction under Subsection (a) of this section does not apply to data or lists that the consumer reporting agency provides to:

(1) the agent from whom information was received;

(2) the insurer on whose behalf the agent acted; or

(3) that insurer's affiliates.

(c) This section may not be construed to restrict the ability of an insurer to obtain a claims history report or a report regarding a motor vehicle.

Sec. 12. RULES. The commissioner may adopt rules as necessary to implement this article.

Sec. 13. EFFECT OF VIOLATION. An insurer that violates this article or a rule adopted under this article commits an unfair practice in violation of Article 21.21 of this code and is subject to sanctions under Chapter 82 of this code.

Sec. 14. REPORT. (a) The commissioner shall submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the 79th Legislature on the information collected from the insurer filings required

under this article and other information obtained by the department regarding the use of credit information by insurers. The report must be submitted before January 1, 2005.

(b) The report required under this section must include:

(1) a summary statement regarding the use of credit information, credit reports, and credit scores by insurers, presented in a manner that protects the identity of individual insurers and consumers;

(2) a description of insurer practices and the effect of different credit models, presented in a manner that protects the identity of individual insurers and consumers;

(3) the number of consumer complaints submitted to the department regarding the use of credit information;

(4) a description of favorable and unfavorable effects on consumers related to the use of credit scoring from information that may be provided by insurers, including the number of consumers receiving lower or higher premiums;

(5) any disproportionate impact on any class of individuals, including classes based on income, race, or ethnicity, resulting from the use of credit, to the extent that information is readily available;

(6) recommendations from the department to the legislature regarding the use of credit information by insurers; and

(7) any other information considered necessary by the commissioner.

(c) This section expires March 1, 2005.

Sec. 15. DUTIES OF DEPARTMENT. The department shall:

(1) update insurer profiles maintained on the department's Internet website to provide information to consumers stating whether or not an insurer uses credit scoring; and

(2) post the report required under Section 14 of this article on the department's Internet website.

SECTION 2.02. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.49-2V to read as follows:

Art. 21.49-2V. REQUIREMENTS REGARDING UNDERWRITING GUIDELINES

Sec. 1. DEFINITIONS. In this article:

(1) "Insurer" means an insurer authorized to write property and casualty insurance in this state, including an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, association, and Lloyd's plan. The term includes an affiliate, as described by this code, if that affiliate is authorized to write insurance subject to this article in this state. The term does not include an agent licensed under Chapter 21 of this code.

(2) "Underwriting guideline" means a rule, standard, marketing decision, or practice that is used by an insurer or an agent of an insurer to examine, bind, accept, reject, cancel, or limit insurance coverage to groups of consumers of insurance.

Sec. 2. APPLICATION. This article applies only to an insurer that writes:

(1) a personal automobile insurance policy;

(2) a homeowners insurance policy;

- (3) a farm and ranch or farm and ranch owners insurance policy; or
- (4) a residential fire and allied lines insurance policy.

Sec. 3. SUBMISSION OF GUIDELINES BY INSURER. (a) Each insurer must submit to the commissioner and the office of public insurance counsel, in the form prescribed by the department, the insurer's underwriting guidelines. The information submitted under this subsection must be sufficient to permit the department to analyze the propriety of the use of the underwriting guidelines.

(b) Underwriting guidelines must be sound, actuarially justified, or otherwise substantially commensurate with the contemplated risk. Underwriting guidelines may not be unfairly discriminatory. The commissioner may, however, authorize an insurer to use underwriting guidelines that are applicable to certain groups if the underwriting guidelines are based on criteria that do not discriminate based on race, sex, religion, ethnicity, or national origin.

(c) The office of public insurance counsel may file with the commissioner any objections of that office to the use of an underwriting guideline submitted under Subsection (a) of this section.

(d) Except as provided by Section 4(b) of this article, any change by an insurer in an underwriting guideline submitted under Subsection (a) of this section must be filed with the department not later than the 10th day after the date on which the insurer begins to use the changed guideline.

Sec. 4. EXAMINATION BY COMMISSIONER. (a) The commissioner may approve, reject, or choose not to approve or reject an underwriting guideline filed under Section 3(d) of this article. If the commissioner does not reject or chooses not to approve or reject an underwriting guideline filed under Section 3(d) of this article, the insurer may use the filed underwriting guideline.

(b) An insurer that proposes a change in an underwriting guideline that will result in the re-underwriting and nonrenewal of more than 10 percent of the insurer's policyholders must file the proposed change with the department. The insurer may use the filed underwriting guideline beginning on the 11th day after the date the insurer files the guideline if the commissioner does not reject the guideline on or before the 10th day after the date the insurer files the guideline.

Sec. 5. ISSUANCE AND RENEWAL CONDITION. Except as otherwise provided by law, an insurer may require that membership dues in its sponsoring organization be paid as a condition for issuance or renewal of a policy.

Sec. 6. CONFIDENTIALITY. (a) An insurer that provides information to the commissioner or the office of public insurance counsel under Section 3 or 4 of this article may request the office of the attorney general to classify the information as proprietary information confidential under Section 552.110, Government Code.

(b) Unless the office of the attorney general makes a determination under Subsection (a) of this section that the information is confidential proprietary information, the information is public information.

SECTION 2.03. Section 38.002, Insurance Code, is amended by adding Subsection (g) to read as follows:

(g) In this section, "insurer" includes a reciprocal or interinsurance exchange, a county mutual insurance company, and a Lloyd's plan.



SECTION 2.04. Articles 21.49-2U and 21.49-2V, Insurance Code, as added by this article, apply only to an insurance policy delivered, issued for delivery, or renewed on or after the effective date of this Act. A policy delivered, issued for delivery, or renewed before that date is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

### ARTICLE 3. COMMERCIAL AUTOMOBILE INSURANCE

SECTION 3.01. Article 5.13, Insurance Code, is amended to read as follows:

Art. 5.13. SCOPE OF SUBCHAPTER [~~SUB-CHAPTER~~]. (a) This subchapter [~~Sub-chapter~~] applies to every insurance company, corporation, interinsurance exchange, mutual, reciprocal, association, Lloyd's plan, [~~Lloyds~~] or other organization or insurer writing any of the characters of insurance business herein set forth, hereinafter called "Insurer"; provided that nothing in this entire subchapter [~~Sub-chapter~~] shall [~~ever~~] be construed to apply to any county or farm mutual insurance company or association, as regulated under Chapters 16 and 17 of this code, except that Article 5.13-2 of this code shall apply to a county mutual insurance company with respect to rates for commercial automobile insurance [~~Code~~].

(b) This subchapter [~~Sub-chapter~~] applies to the writing of casualty insurance and the writing of fidelity, surety, and guaranty bonds, on risks or operations in this State except as herein stated.

(c) Except as otherwise provided by this subchapter, this subchapter [~~This Sub-chapter~~] does not apply to the writing of motor vehicle, life, health, accident, professional liability, reinsurance, aircraft, fraternal benefit, fire, lightning, tornado, windstorm, hail, smoke or smudge, cyclone, earthquake, volcanic eruption, rain, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lockout, water or other fluid or substance, resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes or other conduits or containers, or resulting from casual water entering through leaks or opening in buildings or by seepage through building walls, including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits or container, workers' [~~workmen's~~] compensation, inland marine, ocean marine, marine, or title insurance; nor does this subchapter [~~Sub-chapter~~] apply to the writing of explosion insurance, except insurance against loss from injury to person or property which results accidentally from steam boilers, heaters or pressure vessels, electrical devices, engines and all machinery and appliances used in connection therewith or operation thereby.

(d) This subchapter [~~Sub-chapter~~] shall not be construed as limiting in any manner the types or classes of insurance which may be written by the several types of insurers under appropriate statutes or their charters or permits.

(e) The regulatory power herein conferred is vested in the commissioner [~~Board of Insurance Commissioners of the State of Texas. Within the Board, the Casualty Insurance Commissioner shall have primary supervision of regulation herein provided, subject however to the final authority of the entire Board~~].

SECTION 3.02. The heading to Article 5.13-2, Insurance Code, is amended to read as follows:

Art. 5.13-2. RATES FOR GENERAL LIABILITY, COMMERCIAL AUTOMOBILE, AND COMMERCIAL PROPERTY INSURANCE COVERAGE

SECTION 3.03. Sections 1 and 2, Article 5.13-2, Insurance Code, are amended to read as follows:

Sec. 1. PURPOSE. This article governs the regulation of general liability, commercial automobile, commercial property, which shall include farm and ranch owners and farm and ranch policies, all commercial casualty, and medical professional liability insurance rates and forms. It does not govern [~~automobile,~~] fidelity, surety, or guaranty bonds. The purposes of this article are to:

- (1) promote the public welfare by regulating insurance rates to prohibit excessive, inadequate, or unfairly discriminatory rates;
- (2) promote availability of insurance;
- (3) promote price competition among insurers to provide rates and premiums that are responsive to competitive market conditions;
- (4) prohibit price-fixing agreements and other anticompetitive behavior by insurers;
- (5) regulate the insurance forms used for lines of insurance subject to this article to ensure that they are not unjust, unfair, inequitable, misleading, or deceptive; and
- (6) provide regulatory procedures for the maintenance of appropriate information reporting systems.

Sec. 2. SCOPE. This article applies to all lines of general liability, commercial automobile, commercial property, all commercial casualty, and medical professional liability insurance written under policies or contracts of insurance issued by a licensed insurer, other than a fidelity, surety, or guaranty bond or an automobile insurance policy.

SECTION 3.04. Section 3(2), Article 5.13-2, Insurance Code, is amended to read as follows:

(2) "Insurer" means an insurer to which Article 5.13 of this code applies, but does not include the Texas Windstorm Insurance Association. However, the provisions of Sections 4, 5, 6, and 7 of this article shall not apply to Lloyd's plans or reciprocals with respect to commercial property insurance. The provisions of Sections 4, 5, 6, and 7 of this article shall apply to county mutual insurance companies with respect to commercial automobile insurance.

SECTION 3.05. Article 5.13-2, Insurance Code, is amended by adding Section 11 to read as follows:

Sec. 11. APPLICATION TO CERTAIN INSURERS. (a) Notwithstanding Article 5.13 of this code, any other provision of this article, or any other provision of this code, an insurer that becomes authorized to write personal automobile insurance or residential property insurance in this state on or after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003, including a reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county

mutual insurance company, and a Lloyd's plan, is subject to Sections 4, 5, 6, and 7 of this article in relation to rates for personal automobile insurance or residential property insurance.

(b) This section expires September 1, 2004.

SECTION 3.06. This article expires September 1, 2004.

SECTION 3.07. Article 5.13-2, Insurance Code, is amended by adding Section 12 to read as follows:

Sec. 12. RESIDENTIAL PROPERTY INSURANCE. (a) Notwithstanding any other provision of this article, Article 5.13 of this code, or Subchapter Q of this chapter, rates for residential property insurance are determined under this article in accordance with this section. This section applies to any insurer subject to Article 5.142 of this code. This section applies only to rates for residential property insurance.

(b) Not later than the fifth day after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003, the commissioner shall adopt rating criteria for the review of initial rate filings made under this article. The rating criteria must be those the commissioner shall use to determine if a filed rate complies with the rate standards described by this article.

(c) The rating criteria adopted under this section shall be posted on the Internet and distributed by bulletin.

(d) The commissioner may use the procedures for adopting an emergency rule under Chapter 2001, Government Code, to adopt rating criteria under this section and may modify those procedures as necessary to adopt rating criteria within the time established by Subsection (b) of this section.

(e) Not later than the 20th day after the rating criteria are published under Subsection (c) of this section, each insurer authorized to write residential property insurance in this state shall file with the commissioner the insurer's rates, supporting information, and supplementary rating information and any other information required by the commissioner by rule. The insurer may reference a rate filed by the insurer in accordance with S.B. 310, Acts of the 78th Legislature, Regular Session, 2003, or otherwise previously filed, if that information is updated and supplemented as necessary to comply with this subsection.

(f) Except as otherwise provided by Subsections (g) and (h) of this section, the rate filed by an insurer under this section shall take effect on the 10th day after the date the commissioner receives the insurer's filing required under Subsection (e) of this section.

(g) An insurer may decrease a rate in accordance with this article or file a request with the commissioner to increase the insurer's rate that is in effect. The commissioner may approve the rate increase if the commissioner finds that the rate in effect is inadequate or confiscatory.

(h) Not later than the 120th day after the date an insurer files its rates under this article, the department shall review the rate filing to ensure compliance with this article. The commissioner by order may disapprove or further reduce an insurer's rate filed under Subsection (e) of this section if the commissioner finds that the insurer's rate is excessive. An insurer is not entitled to a hearing prior to the issuance of an order by the commissioner under this subsection.

(i) After receiving notice of the commissioner's disapproval of the rate filed by the insurer, the insurer, not later than the 10th day after the date a disapproval order is issued under Subsection (h) of this section, may request a rate hearing to be conducted by the State Office of Administrative Hearings in accordance with Chapter 40 of this code. To prevail in a hearing conducted under this subsection, an insurer must establish that a reduced rate would be inadequate or confiscatory.

(j) After completion of the rate hearing under Subsection (i) of this section, the administrative law judge shall prepare a proposal for decision under Section 40.058 of this code and remand the case to the commissioner recommending:

(1) that the commissioner affirm the commissioner's order;

(2) additional review of the order by the commissioner, that the parties enter into negotiations, or that the commissioner take other appropriate action with respect to the order;

(3) adoption of a temporary rate pending further review; or

(4) adoption of the rate filed by the insurer.

(k) An insurer may appeal a decision made under Subsection (j) of this section to the Travis County district court, or the insurer may request a binding arbitration to be conducted by arbitrators selected in the manner described by Subsection (l) of this section.

(l) Binding arbitration conducted under Subsection (k) of this section must be conducted by three arbitrators, one selected by the department, one selected by the insurer, and one agreed on by the arbitrators chosen by the department and the insurer. The three arbitrators shall reach a decision by considering a rate proposed by the insurer and a rate proposed by the department. The rate proposed by the department or by the insurer on which two of the three arbitrators agree shall be the insurer's effective rate.

(m) During the time a hearing or an appeal is pending under this section, an insurer may use its rate in effect or a rate approved by the commissioner. After a final determination is made under Subsection (i), (k), or (l) of this section, if the insurer is ordered to reduce its rate in effect to comply with the rating determination, the commissioner may order a refund to a policyholder as provided by Subsection (n) of this section.

(n) The commissioner's order under Subsection (m) of this section may require the insurer to reduce the insurer's rates to comply with the rate standards under this article and to make a refund to policyholders in an amount equal to the excess of premiums paid under the insurer's invalidated rates, plus interest as provided by this subsection. The interest on the refund amount begins to accrue on the first day a policyholder pays an excess premium and ceases to accrue on the date the insurer issues the refund under this subsection. The commissioner shall declare a rate found to be excessive under this section by 3.5 percent or less to be de minimus. An insurer is not required to directly refund an overcharge of less than 3.5 percent to the policyholder if the insurer agrees to reduce future rates by the amount of the overcharge plus the prime rate of interest, as determined by the commissioner, plus one percent.

(o) An insurer has the burden of proof in any hearing or appeal under this section.

(p) An insurer requesting binding arbitration under Subsection (k) of this section shall pay the entire cost of the binding arbitration.

(q) This section expires September 1, 2004.

SECTION 3.08. The expiration of Section 12, Article 5.13-2, Insurance Code, as added by this article, does not affect a hearing or proceeding conducted under Section 12, Article 5.13-2, in connection with an action taken under that law before its expiration regardless of when the hearing or proceeding was commenced, and that law is continued in effect for this purpose.

SECTION 3.09. Article 5.13-2, Insurance Code, is amended by adding Section 13 to read as follows:

Sec. 13. STANDARD RATE INDEX FOR PERSONAL AUTOMOBILE INSURANCE; EXEMPTION. (a) Notwithstanding Article 5.142 of this code or any other provision of this article, this article governs rate regulation of personal automobile insurance issued by a county mutual insurance company as prescribed by this section.

(b) Using standard and generally accepted actuarial techniques, the commissioner shall annually compute and publish a statewide standard rate index that accurately reflects the average statewide rates for classifications for each of the following coverages for personal automobile insurance policies:

- (1) bodily injury liability;
- (2) property damage liability;
- (3) personal injury protection;
- (4) medical payments;
- (5) uninsured and underinsured motorists;
- (6) physical damage—collision; and
- (7) physical damage—other than collision.

(c) The commissioner shall compute the rate index using the benchmark rate in effect for personal automobile insurance under Article 5.101 of this code on the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003, and adjusted annually thereafter by the commissioner to reflect average changes in claims costs in the personal automobile insurance market in this state.

(d) The commissioner may compute and establish standard rate indexes other than the rate index required under Subsection (b) of this section for any of the personal automobile insurance coverages listed under that subsection as necessary to implement this section.

(e) For purposes of this section, "nonstandard rates" means rates that are 130 percent or more than the standard rate index as determined by the commissioner under this section.

(f) A county mutual insurance company that issues personal automobile insurance policies at nonstandard rates is not subject to the filing requirements of this article or Article 5.142 of this code if the insurer and the insurer's affiliated companies or group have a market share of less than 3.5 percent.

(g) A county mutual insurance company described by Subsection (f) of this section that increases its aggregate rates by 10 percent or more in a 12-month period must file its rates in accordance with this article.

(h) The commissioner by rule may designate other types of insurers that historically and as of the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003, have served or are serving the high-risk, nonstandard market. An insurer designated by the commissioner as having served or serving the nonstandard market is governed by this section.

SECTION 3.10. Article 5.13-2, Insurance Code, is amended by adding Section 14 to read as follows:

Sec. 14. REVIEW OF RATES. In reviewing rates under this article, the commissioner shall consider any state or federal legislation that has been enacted and that may impact rates for liability coverage included in a policy subject to this article.

SECTION 3.11. Article 5.13-2, Insurance Code, is amended by adding Section 15 to read as follows:

Sec. 15. NOTICE OF PREMIUM CHARGES. (a) An insurer shall send a policyholder of a policy of residential property insurance issued by the insurer notice of any rate increase scheduled to take effect on the renewal of the policy that will result in an increase in the premium amount to be paid by the policyholder that is at least 10 percent greater than the lesser of the premium amount paid by the policyholder for coverage under the policy during:

(1) the 12-month period preceding the renewal date of the policy; or

(2) the policy period preceding the renewal date of the policy.

(b) An insurer shall send the notice required by Subsection (a) of this section before the renewal date but not later than the 30th day before the date the rate increase is scheduled to take effect.

(c) In addition to the mandatory notice under Subsection (a) of this section, the insurer may send the notice required by Subsection (a) of this section to any policyholder of residential property insurance issued by the insurer, regardless of whether that policyholder's premium amount to be paid will increase as a result of the scheduled rate change.

(d) The commissioner by rule may exempt an insurer from the notice requirements under this section for a short-term policy, as defined by the commissioner, that is written by the insurer.

#### ARTICLE 4. RATE REGULATION EFFECTIVE SEPTEMBER 1, 2004

SECTION 4.01. Article 5.13, Insurance Code, is amended to read as follows:

Art. 5.13. SCOPE OF SUBCHAPTER [~~SUB CHAPTER~~]. (a) This subchapter [~~Sub chapter~~] applies to every insurance company, corporation, interinsurance exchange, mutual, reciprocal, association, Lloyd's plan, [Lloyds] or other organization or insurer writing any of the characters of insurance business herein set forth, hereinafter called "Insurer"; provided that nothing in this entire subchapter [~~Sub chapter~~] shall [ever] be construed to apply to any county or farm mutual insurance company or association, as regulated under Chapters 911 [~~46~~] and 912 [~~47~~] of this code, except that Article 5.13-2 of this code shall apply to a county mutual insurance company with respect to rates for personal and commercial automobile insurance and residential and commercial property insurance [~~Code~~].

(b) This subchapter [~~Sub chapter~~] applies to the writing of casualty insurance and the writing of fidelity, surety, and guaranty bonds, on risks or operations in this State except as herein stated.

(c) Except as otherwise provided by this subchapter, this subchapter ~~[This Sub chapter]~~ does not apply to the writing of motor vehicle, life, health, accident, professional liability, reinsurance, aircraft, fraternal benefit, fire, lightning, tornado, windstorm, hail, smoke or smudge, cyclone, earthquake, volcanic eruption, rain, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lockout, water or other fluid or substance, resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes or other conduits or containers, or resulting from casual water entering through leaks or opening in buildings or by seepage through building walls, including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits or container, workers' ~~[workmen's]~~ compensation, noncommercial inland marine, ocean marine, marine, or title insurance; nor does this subchapter ~~[Sub chapter]~~ apply to the writing of explosion insurance, except insurance against loss from injury to person or property which results accidentally from steam boilers, heaters or pressure vessels, electrical devices, engines and all machinery and appliances used in connection therewith or operation thereby.

(d) This subchapter ~~[Sub chapter]~~ shall not be construed as limiting in any manner the types or classes of insurance which may be written by the several types of insurers under appropriate statutes or their charters or permits.

(e) The regulatory power herein conferred is vested in the commissioner ~~[Board of Insurance Commissioners of the State of Texas. Within the Board, the Casualty Insurance Commissioner shall have primary supervision of regulation herein provided, subject however to the final authority of the entire Board].~~

SECTION 4.02. The heading to Article 5.13-2, Insurance Code, is amended to read as follows:

Art. 5.13-2. RATES FOR GENERAL LIABILITY, PERSONAL AND COMMERCIAL AUTOMOBILE, COMMERCIAL INLAND MARINE, AND RESIDENTIAL AND COMMERCIAL PROPERTY INSURANCE COVERAGE

SECTION 4.03. Sections 1 and 2, Article 5.13-2, Insurance Code, are amended to read as follows:

Sec. 1. PURPOSE. This article governs the regulation of general liability, personal and commercial automobile, commercial inland marine, residential and commercial property, which shall include farm and ranch owners and farm and ranch policies, all commercial casualty, and medical professional liability insurance rates and forms. It does not govern ~~[automobile,]~~ fidelity, surety, or guaranty bonds. The purposes of this article are to:

- (1) promote the public welfare by regulating insurance rates to prohibit excessive, inadequate, or unfairly discriminatory rates;
- (2) promote availability of insurance;
- (3) promote price competition among insurers to provide rates and premiums that are responsive to competitive market conditions;

(4) prohibit price-fixing agreements and other anticompetitive behavior by insurers;

(5) regulate the insurance forms used for lines of insurance subject to this article to ensure that they are not unjust, unfair, inequitable, misleading, or deceptive; and

(6) provide regulatory procedures for the maintenance of appropriate information reporting systems.

Sec. 2. SCOPE. This article applies to all lines of general liability, personal and commercial automobile, commercial inland marine, residential and commercial property, all commercial casualty, and medical professional liability insurance written under policies or contracts of insurance issued by a licensed insurer, other than a fidelity, surety, or guaranty bond [or an automobile insurance policy].

SECTION 4.04. Section 3(2), Article 5.13-2, Insurance Code, is amended to read as follows:

(2) "Insurer" means an insurer to which Article 5.13 of this code applies, but does not include the Texas Windstorm Insurance Association or the Texas FAIR Plan Association. However, the provisions of Sections 4, 5, 6, and 7 of this article shall not apply to Lloyd's plans or reciprocals with respect to commercial property insurance. The provisions of Sections 4, 5, 6, and 7 of this article shall apply to Lloyd's plans, reciprocal and interinsurance exchanges, and county mutual insurance companies with respect to personal and commercial automobile insurance and residential property insurance.

SECTION 4.05. Section 5(a), Article 5.13-2, Insurance Code, is amended to read as follows:

(a) Each insurer shall file with the commissioner all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in this state. For an insurer with less than five percent of the market, the commissioner shall consider insurer and market-specific attributes, as applicable, and shall promulgate filing requirements accordingly to accommodate premium volume and loss experience, targeted markets, limitations on coverage, and any potential barriers to market entry or growth.

SECTION 4.06. This article takes effect September 1, 2004.

## ARTICLE 5. POLICY FORMS AND ENDORSEMENTS

SECTION 5.01. Chapter 5, Insurance Code, is amended by adding Subchapter R to read as follows:

### SUBCHAPTER R. POLICY FORMS FOR CERTAIN LINES

#### Art. 5.145. POLICY FORMS FOR PERSONAL AUTOMOBILE INSURANCE COVERAGE AND RESIDENTIAL PROPERTY INSURANCE COVERAGE

Sec. 1. DEFINITIONS. In this article:

(1) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write personal automobile insurance or residential property insurance in this state. The term includes



an affiliate, as described by this code, if that affiliate is authorized to write and is writing personal automobile insurance or residential property insurance in this state. The term does not include:

(A) the Texas Windstorm Insurance Association under Article 21.49 of this code;

(B) the FAIR Plan Association under Article 21.49A of this code; or

(C) the Texas Automobile Insurance Plan Association under Article 21.81 of this code.

(2) "Personal automobile insurance" means motor vehicle insurance coverage for the ownership, maintenance, or use of a private passenger, utility, or miscellaneous type motor vehicle, including a motor home, trailer, or recreational vehicle, that is:

(A) owned or leased by an individual or individuals; and

(B) not primarily used for the delivery of goods, materials, or services, other than for use in farm or ranch operations.

(3) "Residential property insurance" means insurance coverage against loss to residential real property at a fixed location, or tangible personal property, that is provided in a homeowners policy, including a tenants policy, a condominium owners policy, or a residential fire and allied lines policy.

Sec. 2. REGULATION OF POLICY FORMS AND ENDORSEMENTS. Notwithstanding any other provision in this code, an insurer is governed by the provisions of Section 8, Article 5.13-2, of this code relating to policy forms and endorsements for personal automobile insurance and residential property insurance.

#### ARTICLE 6. WITHDRAWAL REQUIREMENTS

SECTION 6.01. (a) Effective June 1, 2003, Section 827.001, Insurance Code, is amended to read as follows:

Sec. 827.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

(1) "Affiliate" has the meaning described by Section 823.003.

(2) "Insurer" means an insurance company or other legal entity authorized to engage in the business of insurance in this state, including a reciprocal or interinsurance exchange, a Lloyd's plan, and a county mutual insurance company. The term includes an affiliate. The term does not include an eligible surplus lines insurer regulated under Chapter 981.

(3) "Rating [~~rating~~]" means a rating territory established by the department.

(b) Until June 1, 2003, Subsection (a), Article 21.49-2C, Insurance Code, is amended by adding Subdivisions (4) and (5) to read as follows:

(4) "Affiliate" has the meaning described by Section 2, Article 21.49-1, of this code. This subdivision expires June 1, 2003.

(5) "Insurer" means an insurance company or other legal entity authorized to engage in the business of insurance in this state, including a reciprocal or interinsurance exchange, a Lloyd's plan, and a county mutual insurance company. The term includes an affiliate. The term does not include an eligible surplus lines insurer regulated under Article 1.14-2 of this code. This subdivision expires June 1, 2003.

SECTION 6.02. (a) Effective June 1, 2003, Section 827.002, Insurance Code, is amended to read as follows:

Sec. 827.002. EXEMPTION. This chapter does not apply to a transfer of business from an insurer to a company that:

- (1) is under common ownership with the insurer; ~~and~~
- (2) is authorized to engage in the business of insurance in this state; and
- (3) is subject to, and has not been exempted from, rate regulation under Article 5.142 or on and after September 1, 2004, is subject to rate regulation under Article 5.13-2.

(b) Until June 1, 2003, Subsection (b), Article 21.49-2C, Insurance Code, is amended to read as follows:

(b) This article does not apply to the transfer of the business from an insurer to a company that is under common ownership, is admitted to do business in this state, and is subject to, and has not been exempted from, rate regulation under Article 5.142 of this code. This subsection expires June 1, 2003.

SECTION 6.03. (a) Effective June 1, 2003, Section 827.003, Insurance Code, is amended to read as follows:

Sec. 827.003. WITHDRAWAL PLAN REQUIRED. An ~~[authorized]~~ insurer shall file with the commissioner a plan for orderly withdrawal if the insurer proposes to:

- (1) withdraw from writing a line of insurance in this state or reduce the insurer's total annual premium volume by 75 percent or more; or
- (2) reduce, in a rating territory, the insurer's total annual premium volume in a personal line of motor vehicle comprehensive or residential property insurance by 50 percent or more.

(b) Until June 1, 2003, Subsection (a)(1), Article 21.49-2C, Insurance Code, is amended to read as follows:

(1) This subdivision expires June 1, 2003. An ~~[authorized]~~ insurer shall file with the commissioner a plan for orderly withdrawal if the insurer proposes to withdraw from writing a line of insurance in this state or to reduce its total annual premium volume by 75 percent or more or proposes, in a personal line of motor vehicle comprehensive or residential property insurance, to reduce its total annual premium volume in a rating territory by 50 percent or more. The insurer's plan shall be constructed to protect the interests of the people of this state and shall indicate the date it intends to begin and complete its withdrawal plan and must contain provisions for:

- (A) meeting the insurer's contractual obligations;
- (B) providing service to its Texas policyholders and claimants; and
- (C) meeting any applicable statutory obligations, such as the payment of assessments to the guaranty fund and participation in any assigned risk plans or joint underwriting arrangements.

SECTION 6.04. (a) Effective June 1, 2003, Section 827.010(d), Insurance Code, is amended to read as follows:

(d) To impose or renew a moratorium under this section, the commissioner must determine, after notice and hearing, that a catastrophic event has occurred and that as a result of that event a particular line of insurance is not reasonably expected to be

available to a substantial number of policyholders or potential policyholders in this state or, in the case of ~~[personal]~~ lines of personal automobile ~~[motor vehicle comprehensive]~~ or residential property insurance, in a rating territory.

(b) Until June 1, 2003, Subsection (g), Article 21.49-2C, Insurance Code, is amended to read as follows:

(g) The commissioner may impose a moratorium of up to two years on the approval of plans for withdrawal or implementation of plans to restrict the writing of new business pursuant to Subsection (a)(2) of this section, including those such plans implemented subsequent to the commissioner's publishing of notice of intention to impose a moratorium regarding the catastrophic event related to such plans, and may renew the moratorium annually. To impose or renew a moratorium, the commissioner must find after notice and public hearing that a catastrophic event has occurred and that as a result of the event, the relevant line of insurance is not reasonably expected to be available to a substantial number of policyholders or potential policyholders in this state, or in the case of ~~[personal]~~ lines of personal automobile ~~[motor vehicle comprehensive]~~ or residential property insurance, in a rating territory. Such notice and hearing shall be governed by provisions of Chapter 2001, Government Code, related to contested cases and by Chapter 40 of this code ~~[of Subsection (b), Article 1.33B, Insurance Code]~~. The commissioner shall, by rule, establish reasonable criteria for applying the above set forth standards for determining whether to impose a moratorium. The commissioner may limit a moratorium on withdrawal from or reduction in personal lines insurance to certain geographical areas of this state.

#### ARTICLE 7. INSURANCE DISCRIMINATION

SECTION 7.01. Article 21.21-6, Insurance Code, as added by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 6 to read as follows:

Sec. 6. CRIMINAL PENALTY. (a) In this section, "person" means a legal entity described in Section (2)(a), (b), (e), (f), or (j) of this article or its officers or directors.

(b) A person commits an offense if the person, with criminal negligence:

(1) offers insurance coverage at a premium based on a rate that is, because of race, color, religion, ethnicity, or national origin, different from another premium rate offered or used by the person for the same coverage and the same risk; or

(2) collects an insurance premium based on a rate that is, because of race, color, religion, ethnicity, or national origin, different from another premium rate offered or used by the person for the same coverage and the same risk.

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

#### ARTICLE 8. REVENUE BOND PROGRAM

##### PART A. FAIR PLAN ASSOCIATION

SECTION 8.01. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.49A-1 to read as follows:

Art. 21.49A-1. REVENUE BOND PROGRAM FOR FAIR PLAN ASSOCIATION

Sec. 1. PURPOSE. The legislature finds that the issuance of public securities to provide a method to raise funds to provide residential property insurance through the FAIR Plan Association in this state is for the benefit of the public and in furtherance of a public purpose.

Sec. 2. DEFINITIONS. In this article:

(1) "Association" means the FAIR Plan Association established under Article 21.49A of this code.

(2) "Public security resolution" means the resolution or order authorizing public securities to be issued under this article.

(3) "Bond" means any debt instrument or public security issued by the Texas Public Finance Authority.

(4) "Board" means the board of directors of the Texas Public Finance Authority.

(5) "Insurer" means any insurer required to participate in the association under Section 5, Article 21.49A, of this code, including a Lloyd's plan or a reciprocal or interinsurance exchange.

Sec. 3. PUBLIC SECURITIES AUTHORIZED; APPLICATION OF TEXAS PUBLIC FINANCE AUTHORITY ACT. (a) At the request of the association, the Texas Public Finance Authority shall issue public securities to:

(1) fund the association, including:

(A) to establish and maintain reserves to pay claims;

(B) to pay operating expenses; and

(C) to purchase reinsurance;

(2) pay costs related to issuance of the public securities; and

(3) pay other costs related to the public securities as may be determined by the board.

(b) To the extent not inconsistent with this article, Chapter 1232, Government Code, applies to public securities issued under this article. In the event of a conflict, this article controls.

Sec. 4. APPLICABILITY OF OTHER STATUTES. The following laws apply to public securities issued under this article to the extent consistent with this article:

(1) Chapters 1201, 1202, 1204, 1205, 1231, and 1371, Government Code;  
and

(2) Subchapter A, Chapter 1206, Government Code.

Sec. 5. LIMITS. The Texas Public Finance Authority may issue, on behalf of the association, public securities in a total amount not to exceed \$75 million.

Sec. 6. CONDITIONS. (a) Public securities issued under this article may be issued at public or private sale.

(b) Public securities may mature not more than 10 years after the date issued.

(c) Public securities must be issued in the name of the association.

Sec. 7. ADDITIONAL COVENANTS. In a public security resolution, the board may make additional covenants with respect to the public securities and the designated income and receipts of the association pledged to their payment, and may provide for the flow of funds and the establishment, maintenance, and investment of funds and accounts with respect to the public securities.

Sec. 8. SPECIAL ACCOUNTS. (a) A public security resolution may establish special accounts, including an interest and sinking fund account, reserve account, and other accounts.

(b) The association shall administer the accounts in accordance with Article 21.49A of this code.

Sec. 9. SECURITY. (a) Public securities are payable only from the service fee established under Section 10 of this article or other amounts that the association is authorized to levy, charge, and collect.

(b) Public securities are obligations solely of the association. Public securities do not create a pledging, giving, or lending of the faith, credit, or taxing authority of this state.

(c) Each public security must include a statement that the state is not obligated to pay any amount on the public security and that the faith, credit, and taxing authority of this state are not pledged, given, or lent to those payments.

(d) Each public security issued under this article must state on its face that the public security is payable solely from the revenues pledged for that purpose and that the public security does not and may not constitute a legal or moral obligation of the state.

Sec. 10. SERVICE FEE. (a) A service fee may be assessed against:

(1) each insurer; and

(2) the association.

(b) The service fee shall be set by the commissioner in an amount sufficient to pay all debt service on the public securities. The service fee shall be paid by each insurer and the association as required by the commissioner by rule.

(c) The comptroller shall collect the service fee and the department shall reimburse the comptroller in the manner described by Article 4.19 of this code.

(d) The commissioner, in consultation with the comptroller, may coordinate payment and collection of the service fee with other payments made by insurers and collected by the comptroller.

(e) As a condition of engaging in the business of insurance in this state, an insurer agrees that if the company leaves the property insurance market in this state the insurer remains obligated to pay, until the public securities are retired, the insurer's share of the service fee assessed under this section in an amount proportionate to that insurer's share of the property insurance market, including residential property insurance, in this state as of the last complete reporting period before the date on which the insurer ceases to engage in that insurance business in this state. The proportion assessed against the insurer shall be based on the insurer's gross premiums for property insurance, including residential property insurance, for the insurer's last reporting period.

Sec. 11. TAX EXEMPT. The public securities issued under this article, any interest from those public securities, and all assets pledged to secure the payment of the public securities are free from taxation by the state or a political subdivision of this state.

Sec. 12. AUTHORIZED INVESTMENTS. The public securities issued under this article constitute authorized investments under Articles 2.10 and 3.33 and Subpart A, Part I, Article 3.39, of this code.

Sec. 13. STATE PLEDGE. The state pledges to and agrees with the owners of any public securities issued in accordance with this article that the state will not limit or alter the rights vested in the association to fulfill the terms of any agreements made with the owners of the public securities or in any way impair the rights and remedies of those owners until the public securities, bond premium, if any, or interest, and all

costs and expenses in connection with any action or proceeding by or on behalf of those owners, are fully met and discharged. The association may include this pledge and agreement of the state in any agreement with the owners of the public securities.

Sec. 14. ENFORCEMENT BY MANDAMUS. A writ of mandamus and all other legal and equitable remedies are available to any party at interest to require the association and any other party to carry out agreements and to perform functions and duties under this article, the Texas Constitution, or a public security resolution.

SECTION 8.02. Section 3(e), Article 21.49A, Insurance Code, is amended to read as follows:

(e) The plan of operation shall provide:

(1) for establishment of a FAIR Plan Association for the issuing of residential property insurance pursuant to this Act and the distribution of the losses and the expenses in the writing of such insurance in this state;

(2) that all insurers licensed to write property insurance and writing residential property insurance shall participate in the writings, expenses, ~~profits,~~ and losses of the association, in the proportion that the net direct premiums, of each participating insurer, written in this state during the preceding calendar year, bear to the aggregate net direct premium written in this state by all participating insurers; such information shall be determined in accordance with the residential property statistical plan adopted by the commissioner;

(3) that a participating insurer is entitled to receive credit for similar insurance voluntarily written in a designated underserved area and its participation in the writings in the association shall be reduced in accordance with the provisions of the plan of operation;

(4) for the immediate binding of eligible risks; for the use of premium installment payment plans, adequate marketing, and service facilities; and for the establishment of reasonable service standards;

(5) procedures for efficient, economical, fair, and nondiscriminatory administration of the FAIR Plan Association;

(6) procedures for determining the net level of participation required for each insurer in the FAIR Plan Association;

(7) for the use of deductibles and other underwriting devices and for assessment of all members in amounts sufficient to operate the association; and establish maximum limits of liability to be placed through the program; and commissions to be paid to the licensed agents submitting applications;

(8) that the association issue policies in its own name;

(9) reasonable underwriting standards for determining insurability of the risk;

(10) procedures for the assumption and ceding of reinsurance by the association; and

(11) any other procedures or operational matters deemed necessary by the governing committee or the commissioner.

SECTION 8.03. Section 5(d), Article 21.49A, Insurance Code, is amended to read as follows:

(d) Each insurer must participate in the writings, expenses, [~~profits,~~] and losses of the association in the proportion that its net direct premiums written bear to the aggregate net direct premiums written by all insurers.

SECTION 8.04. Section 11, Article 21.49A, Insurance Code, is amended to read as follows:

Sec. 11. ASSESSMENTS AND PREMIUM SURCHARGES. Should a deficit occur in the association, the association, at the direction of the commissioner, shall either request the issuance of public securities as authorized by Article 21.49A-1 of this code or assess participating insurers in accordance with this section. Each [~~and each~~] insurer may charge a premium surcharge on every property insurance policy issued by it insuring property in this state, the effective date of which policy is within the three-year period commencing 90 days after the date of assessment by the association under this section. The amount of the surcharge shall be calculated on the basis of a uniform percentage of the premium on such policies equal to one-third of the ratio of the amount of an insurer's assessment to the amount of its direct earned premiums as reported in its financial statement to the department for the calendar year immediately preceding the year in which the assessment is made, such that over the period of three years the aggregate of all such surcharges by an insurer shall be equal to the amount of the assessment of such insurer. The minimum surcharges on a policy may be \$1; all surcharges may be rounded to the nearest dollar.

SECTION 8.05. Article 21.49A, Insurance Code, is amended by adding Section 15 to read as follows:

Sec. 15. RETENTION OF PROFITS. The association shall retain any profits of the association to be used for the purposes of the association. The profits of the association may not be distributed to insurers.

#### PART B. TRANSITION

SECTION 8.06. The changes in law made by this article to Article 21.49A, Insurance Code, apply only to the profits earned by the FAIR Plan Association in accordance with Article 21.49A on or after the effective date of this Act.

#### ARTICLE 9. CONFORMING AMENDMENTS; REPEALER

SECTION 9.01. Article 5.01(f), Insurance Code, is amended to read as follows:

(f) Notwithstanding Subsections (a) through (d) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [~~March 1, 1992~~], rates for personal automobile insurance in this state are determined as provided by Subchapter Q of this chapter, and rates for commercial motor vehicle insurance in this state are determined as provided by Article 5.13-2 [~~the flexible rating program adopted under Subchapter M~~] of this code [~~chapter~~]. On and after September 1, 2004, rates for personal automobile insurance in this state are determined as provided by Article 5.13-2 of this code.

SECTION 9.02. Section 4, Article 5.01C, Insurance Code, is amended to read as follows:

Sec. 4. FORMS. An insurer selling short-term liability insurance policies under this article must use the policy forms adopted by the commissioner under Article 5.06 of this code or filed and in effect as provided by Article 5.145 of this code unless the insurer is exempt from using those forms.

SECTION 9.03. Article 5.01-2(b), Insurance Code, is amended to read as follows:

(b) On and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [~~March 1, 1992~~], rates for personal automobile [~~motor vehicle~~] insurance written by a Lloyd's plan insurer or a reciprocal or interinsurance exchange are determined as provided by [the flexible rating program adopted under] Subchapter Q [~~M~~] of this chapter. This subsection expires June 1, 2003.

SECTION 9.04. Section 4, Article 5.01-4, Insurance Code, is amended to read as follows:

Sec. 4. APPLICABILITY OF CERTAIN LAWS. (a) In reporting incurred losses and earned premiums as required under this subchapter or [~~or~~] Subchapter Q [~~M~~] of this chapter, or on and after September 1, 2004, under Article 5.13-2 [~~or Chapter 17~~] of this code, an insurer shall separately report experience based on use of the mile-based rating plan and the time-based rating plan.

(b) The classifications used by an insurer for motor vehicles insured under the mile-based rating plan are exempt from the provisions of this subchapter other than this article, ~~and~~ Subchapter Q [~~M~~] of this chapter, and on and after September 1, 2004, Article 5.13-2 of this code.

SECTION 9.05. Article 5.03(g), Insurance Code, is amended to read as follows:

(g) Notwithstanding Sections (a) through (e) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [~~March 1, 1992~~], rates for personal automobile insurance in this state are determined as provided by Subchapter Q of this chapter, and rates for commercial motor vehicle insurance in this state [~~vehicles~~] are determined as provided by Article 5.13-2 [~~Subchapter M~~] of this code [~~chapter~~]. On and after September 1, 2004, rates for personal automobile insurance in this state are determined as provided by Article 5.13-2 of this code.

SECTION 9.06. Article 5.04(c), Insurance Code, is amended to read as follows:

(c) Notwithstanding Subsections (a) and (b) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [~~March 1, 1992~~], rates for personal automobile insurance in this state are determined as provided by Subchapter Q of this chapter, and rates for commercial motor vehicle insurance in this state [~~vehicles~~] are determined as provided by Article 5.13-2 [~~Subchapter M~~] of this code [~~chapter~~]. On and after September 1, 2004, rates for personal automobile insurance in this state are determined as provided by Article 5.13-2 of this code.

SECTION 9.07. Article 5.06, Insurance Code, is amended by adding Subsection (12) to read as follows:

(12)(a) Notwithstanding Subsections (1)-(10) of this article, policy forms and endorsements for personal automobile insurance in this state are regulated under Article 5.13-2 of this code.

(b) An insurer may continue to use the policy forms and endorsements promulgated, approved, or adopted by the commissioner under this article before the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003, on



notification in writing to the commissioner that the insurer will continue to use the policy forms and endorsements promulgated, approved, or adopted by the commissioner under this article.

SECTION 9.08. Subsection (2), Article 5.06-1, Insurance Code, is amended to read as follows:

(2) For the purpose of these coverages: (a) the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency.

(b) The term "underinsured motor vehicle" means an insured motor vehicle on which there is valid and collectible liability insurance coverage with limits of liability for the owner or operator which were originally lower than, or have been reduced by payment of claims arising from the same accident to, an amount less than the limit of liability stated in the underinsured coverage of the insured's policy.

(c) The commissioner ~~[Board]~~ may, in the policy forms adopted under Article 5.06 of this code, define "uninsured motor vehicle" to exclude certain motor vehicles whose operators are in fact uninsured. The commissioner may in the policy forms filed under Article 5.145 of this code allow the term "uninsured motor vehicle" to be defined to exclude certain motor vehicles whose operators are in fact uninsured.

(d) The portion of a policy form adopted under Article 5.06 of this code or filed under Article 5.145 of this code to provide coverage under this article shall include provisions that, regardless of the number of persons insured, policies or bonds applicable, vehicles involved, or claims made, the total aggregate limit of liability to any one person who sustains bodily injury or property damage as the result of any one occurrence shall not exceed the limit of liability for these coverages as stated in the policy and the total aggregate limit of liability to all claimants, if more than one, shall not exceed the total limit of liability per occurrence as stated in the policy; and shall provide for the exclusion of the recovery of damages for bodily injury or property damage or both resulting from the intentional acts of the insured. The portion of a policy form adopted under Article 5.06 of this code or filed under Article 5.145 of this code to provide coverage under this article shall require that in order for the insured to recover under the uninsured motorist coverages where the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured is unknown, actual physical contact must have occurred between the motor vehicle owned or operated by such unknown person and the person or property of the insured.

SECTION 9.09. Article 5.06-6, Insurance Code, is amended to read as follows:

Art. 5.06-6. COVERAGES FOR SPOUSES AND FORMER SPOUSES. A personal automobile policy or any similar policy form adopted or approved by the commissioner ~~[State Board of Insurance]~~ under Article 5.06 of this code or filed under Article 5.145 of this code that covers liability arising out of ownership, maintenance, or use of a motor vehicle of a spouse, who is otherwise insured by the policy, shall contain a provision to continue coverage for the spouse during a period of separation in contemplation of divorce.

SECTION 9.10. Article 5.09(c), Insurance Code, is amended to read as follows:

(c) Notwithstanding Subsection (a) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for personal automobile insurance in this state are determined as provided by Subchapter Q of this chapter, and rates for commercial motor vehicle insurance in this state [vehicles] are determined as provided by Article 5.13-2 [Subchapter M] of this code [chapter]. On and after September 1, 2004, rates for personal automobile insurance in this state are determined as provided by Article 5.13-2 of this code.

SECTION 9.11. Article 5.11(c), Insurance Code, is amended to read as follows:

(c) Notwithstanding Subsections (a) and (b) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for personal automobile insurance in this state are determined as provided by Subchapter Q of this chapter, and rates for commercial motor vehicle insurance in this state [vehicles] are determined as provided by Article 5.13-2 [Subchapter M] of this code [chapter]. On and after September 1, 2004, rates for personal automobile insurance in this state are determined as provided by Article 5.13-2 of this code.

SECTION 9.12. Article 5.25(b), Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for homeowners and residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter Q [M] of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code, except that on and after September 1, 2004, rates for all lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code. This subsection does not affect the requirement for the commissioner to conduct inspections of commercial property and prescribe a manual of rules and rating schedules for commercial property under this subchapter.

SECTION 9.13. Article 5.25A(b), Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for homeowners and residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter Q [M] of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code, except that on and after September 1, 2004, rates for all lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code.

SECTION 9.14. Article 5.25-2, Insurance Code, is amended to read as follows:

Art. 5.25-2. CITY FIRE LOSS LISTS

Sec. 1. In this article,

[(1)] "list" means the list of fire and lightning losses in excess of \$100 paid under policy forms adopted or approved by the commissioner [board] under Article 5.35 of this code or filed and in effect as provided by Article 5.145 of this code [subchapter] in a particular city or town prepared by the department [State Board of Insurance] for distribution to the city or town[;

[(2)] "board" means the State Board of Insurance].

Sec. 2. (a) The department [board] shall compile for each city or town in Texas a list of the insured fire losses paid under policy forms adopted or approved by the commissioner [board] under Article 5.35 of this code or filed and in effect as provided by Article 5.145 of this code [subchapter] in that city or town for the preceding statistical year.

(b) The list shall include:

(1) the names of persons recovering losses under policy forms adopted or approved by the commissioner [board] under Article 5.35 of this code or filed and in effect as provided by Article 5.145 of this code [subchapter];

(2) the addresses or locations where the losses occurred; and

(3) the amount paid by the insurance company on each loss.

(c) The department [board] shall obtain the information to make the lists from insurance company reports of individual losses during the statistical year.

Sec. 3. Upon the request of any city or town, or its duly authorized agent or fire marshall, the department [board] shall provide that city and town with a copy of the list for its particular area.

Sec. 4. Each city or town shall investigate its list to determine the losses actually occurring in its limits and shall make a report to the department, [board] which report shall include:

(1) a list of the losses that actually occurred in the limits of the city or town;

(2) a list of any losses not occurring in the limits of the city or town; and

(3) other evidence essential to establishing the losses in the city or town.

Sec. 5. The department [board] shall make such changes or corrections as to it shall seem appropriate in order to correct the list of insured fire and lightning losses paid under policy forms adopted or approved by the commissioner [board] under Article 5.35 of this code or filed and in effect as provided by Article 5.145 of this code [subchapter] in a particular city or town and said list of losses, as changed or corrected, shall be used to determine the fire record credit or debit for each particular city or town for the next year.

Sec. 6. The commissioner [board] shall set and collect a charge for compiling and providing a list of fire and lightning losses paid under policy forms adopted or approved by the commissioner [board] under Article 5.35 of this code or filed and in effect as provided by Article 5.145 of this code [subchapter] in a particular city or town and as the commissioner [board] shall deem appropriate to administer the fire record system.

Sec. 7. The department [board] is authorized to require each and every city or town in the State of Texas and each and every insurance company or carrier of every type and character whatsoever doing business in the State of Texas to furnish to it a complete and accurate list of all fire and lightning losses occurring within the State of Texas and reflected in their records for the purpose of accumulating statistical information for the control and prevention of fires.

Sec. 8. The department [board] may, at its discretion, furnish such list only during such time as the fire record system remains in force and effect.

SECTION 9.15. Article 5.26(i), Insurance Code, is amended to read as follows:

(i) Notwithstanding Subsections (a)-(h) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for homeowners and residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter Q [M] of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code, except that on and after September 1, 2004, rates for all lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code.

SECTION 9.16. Article 5.28(d), Insurance Code, is amended to read as follows:

(d) Notwithstanding Subsection (a) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for homeowners and residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter Q [M] of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code, except that on and after September 1, 2004, rates for all lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code.

SECTION 9.17. Article 5.29(b), Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for homeowners and residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter Q [M] of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code, except that on and after September 1, 2004, rates for all lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code.

SECTION 9.18. Article 5.30(b), Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for homeowners and residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter Q [M] of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code, except that on and after September 1, 2004, rates for all lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code.

SECTION 9.19. Article 5.31(b), Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for homeowners and residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter Q [M] of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code, except that on and after September 1, 2004, rates for all lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code.

SECTION 9.20. Article 5.32(b), Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for homeowners and residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter Q [M] of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code, except that on and after September 1, 2004, rates for all lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code.

SECTION 9.21. Article 5.34(b), Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for homeowners and residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter Q [M] of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code, except that on and after September 1, 2004, rates for all lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code.

SECTION 9.22. Article 5.35, Insurance Code, is amended by adding Subsection (k) to read as follows:

(k)(1) Notwithstanding Subsections (a)-(j) of this article, policy forms and endorsements for residential property insurance in this state are regulated under Article 5.13-2 of this code.

(2) An insurer may continue to use the policy forms and endorsements promulgated, approved, or adopted by the commissioner under this article before the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003, on notification in writing to the commissioner that the insurer will continue to use the policy forms and endorsements promulgated, approved, or adopted by the commissioner under this article.

SECTION 9.23. Article 5.35-1, Insurance Code, is amended to read as follows:

Art. 5.35-1. COVERAGES FOR SPOUSES AND FORMER SPOUSES. A homeowner's policy or fire policy promulgated under Article 5.35 of this code or filed and in effect as provided by Article 5.145 of this code may not be delivered, issued for delivery, or renewed in this state unless the policy contains the following language: "It is understood and agreed that this policy, subject to all other terms and conditions contained in this policy, when covering residential community property, as defined by state law, shall remain in full force and effect as to the interest of each spouse covered, irrespective of divorce or change of ownership between the spouses unless excluded by endorsement attached to this policy until the expiration of the policy or until canceled in accordance with the terms and conditions of this policy."

SECTION 9.24. Article 5.36, Insurance Code, is amended to read as follows:

Art. 5.36. WRITTEN EXPLANATION OF CERTAIN ENDORSEMENTS REQUIRED. An insurer may not use an endorsement to a policy form to which Article 5.35 of this code or Article 5.145 of this code applies that reduces the amount of coverage, unless requested by the insured, that would otherwise be provided under the policy unless the insurer provides the policyholder with a written explanation of the change made by the endorsement before the effective date of the change.

SECTION 9.25. Article 5.39(b), Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for homeowners and residential fire and residential allied lines insurance coverage under this subchapter are determined, and hearings related to those rates are conducted, as provided by Subchapter Q ~~[M]~~ of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code, except that on and after September 1, 2004, rates for all lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code.

SECTION 9.26. Article 5.40(d), Insurance Code, is amended to read as follows:

(d) Notwithstanding Subsections (a)-(c) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for homeowners and residential fire and residential allied lines insurance coverage under this subchapter are determined, and hearings related to those rates are conducted, as provided by Subchapter Q ~~[M]~~ of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code, except that on and after September 1, 2004, rates for all lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code.

SECTION 9.27. Article 5.41(b), Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for homeowners and residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter Q ~~[M]~~ of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code, except that on and after September 1, 2004, rates for all lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code.

SECTION 9.28. Article 5.53(g), Insurance Code, is amended to read as follows:

(g) The writing of inland marine insurance, rain insurance and insurance against loss by hail on farm crops, shall be governed by the provisions of Articles 5.25 to 5.48, inclusive, and also Article [Articles 5.50 to 5.51[-, inclusive,]] of this subchapter and Article 5.67 of Subchapter D~~[-]~~ of this chapter, in the same manner and to the same extent as fire insurance and fire insurance rates are now affected by the provisions of said articles, except that wherever in any of said articles reference is made to making, fixing, prescribing, determination or promulgation by the Board of rates or policy forms or endorsements, the provisions of this article shall control. On and after September 1, 2004, rates for commercial inland marine insurance are determined as provided by Article 5.13-2 of this code. Notwithstanding any other provision of this subchapter, rates for inland marine insurance, other than commercial inland marine insurance, are determined as provided by this article. [Notwithstanding any other provision of this subchapter, the flexible rating program created under Subchapter M of this chapter does not apply to this article.]

SECTION 9.29. Article 5.96(a-1), Insurance Code, is amended to read as follows:

(a-1) This [Except as provided by Section 5(d), Article 5.101, of this code, this] article does not apply to the setting of [~~benchmark~~] rates for motor vehicle insurance and fire and allied lines insurance under Subchapter Q [~~M~~] of this chapter or, on and after September 1, 2004, rates for motor vehicle insurance and fire and allied lines insurance under Article 5.13-2 of this code.

SECTION 9.30. Section 8, Article 21.77, Insurance Code, is amended to read as follows:

Sec. 8. POLICY FORMS. All policy forms for insurance written under this article shall be prescribed by the commissioner [board] as provided in Article 5.06 of this code or filed and in effect as provided in Article 5.145 of this code[~~, Insurance Code~~].

SECTION 9.31. (a) Effective June 1, 2003, Section 912.002, Insurance Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A county mutual insurance company is exempt from the operation of all insurance laws of this state[~~, including the flexible rating program under Article 5.101,~~] except laws that are made applicable by their specific terms or except as specifically provided by this chapter.

(c) Rate regulation for a personal automobile insurance policy written by a county mutual insurance company is subject to Subchapter Q, Chapter 5. Rate regulation for a residential fire and allied lines insurance policy written by a county mutual insurance company is subject to Subchapter Q, Chapter 5. On and after September 1, 2004, rate regulation for a personal automobile insurance policy and a residential fire and allied lines insurance policy written by a county mutual insurance company is subject to Article 5.13-2. A county mutual insurance company is subject to Subchapter O, Chapter 5. The commissioner may adopt rules as necessary to implement this subsection.

(b) Until June 1, 2003, Article 17.22(b), Insurance Code, is amended to read as follows:

(b) Rate regulation for a personal automobile insurance policy written by a county mutual insurance company is subject to Subchapter Q, Chapter 5, of this code. Rate regulation for a residential fire and allied lines insurance policy written by a county mutual insurance company is subject to Subchapters O and Q, Chapter 5, of this code. The commissioner may adopt rules as necessary to implement this subsection. This subsection expires June 1, 2003. [The flexible rating program created under Subchapter M, Chapter 5, of this code does not apply to county mutual insurance companies.]

SECTION 9.32. Section 912.152, Insurance Code, is amended to read as follows:

Sec. 912.152. POLICY FORMS. (a) A county mutual insurance company is subject to Articles 5.06, [and] 5.35, and 5.145.

(b) County [The commissioner, in accordance with Article 5.35, may adopt for use by county] mutual insurance companies shall file policy forms under Article 5.145 or continue to use the standard policy forms and endorsements promulgated under Articles 5.06 and 5.35 on notification to the commissioner in writing in the manner

~~prescribed by those articles that those forms will continue to be used [uniform policy forms that differ from the forms adopted for use by other companies and shall prescribe the conditions under which a county mutual insurance company:~~

- ~~[(1) may use the policy forms adopted under this subsection; or  
(2) shall use the policy forms adopted for other companies].~~

SECTION 9.33. (a) Effective June 1, 2003, Section 941.003(b), Insurance Code, is amended to read as follows:

(b) A Lloyd's plan is subject to:

- (1) Section 5, Article 1.10;
- (2) Article 1.15A;
- (3) Subchapters [Subchapter] A, O, Q, and R, Chapter 5;
- (4) Articles 5.35, 5.38, 5.39, 5.40, and 5.49;
- (5) Articles 21.21 and 21.49-8; ~~and~~
- (6) Sections 822.203, 822.205, 822.210, and 822.212; and
- (7) Article 5.13-2, as provided by that article.

(b) Until June 1, 2003, Article 18.23, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) Rate regulation for a personal automobile insurance policy written by a Lloyd's plan is subject to Subchapter Q, Chapter 5, of this code. Rate regulation for a homeowners or residential fire and allied lines insurance policy written by a Lloyd's plan is subject to Subchapter Q, Chapter 5, of this code. The commissioner may adopt rules as necessary to implement this subsection. A Lloyd's plan is subject to Subchapter O, Chapter 5, of this code. This subsection expires June 1, 2003.

SECTION 9.34. (a) Effective June 1, 2003, Section 942.003(b), Insurance Code, is amended to read as follows:

(b) An exchange is subject to:

- (1) Section 5, Article 1.10;
- (2) Articles 1.15, 1.15A, and 1.16;
- (3) Subchapters [Subchapter] A, O, Q, and R, Chapter 5;
- (4) Articles 5.35, 5.37, 5.38, 5.39, and 5.40;
- (5) Articles 21.21 and 21.49-8; ~~and~~
- (6) Sections 822.203, 822.205, 822.210, 822.212, 861.254(a)-(f), 861.255, 862.001(b), and 862.003; and
- (7) Article 5.13-2, as provided by that article.

(b) Until June 1, 2003, Article 19.12, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) Rate regulation for a personal automobile insurance policy written by a reciprocal or interinsurance exchange is subject to Subchapter Q, Chapter 5, of this code. Rate regulation for a homeowners or residential fire and allied lines insurance policy written by a reciprocal or interinsurance exchange is subject to Subchapter Q, Chapter 5, of this code. The commissioner may adopt rules as necessary to implement this subsection. A reciprocal or interinsurance exchange is subject to Subchapter O, Chapter 5, of this code. This subsection expires June 1, 2003.

SECTION 9.35. Section 502.153(d), Transportation Code, is amended to read as follows:



(d) A personal automobile policy used as evidence of financial responsibility under this section must comply with Article 5.06 or 5.145, Insurance Code.

SECTION 9.36. Section 521.143(c), Transportation Code, is amended to read as follows:

(c) A personal automobile insurance policy used as evidence of financial responsibility under this section must comply with Article 5.06 or 5.145, Insurance Code.

SECTION 9.37. The following laws are repealed:

(1) Articles 5.03-2, 5.03-3, 5.03-4, and 5.03-5, Insurance Code;  
 (2) Articles 5.26(h), 5.33A, 5.33C, 5.50, 5.101, and 40.061, Insurance Code;

(3) Section 6, Article 17.25, Insurance Code;

(4) Section 4C, Article 5.73, Insurance Code;

(5) as effective June 1, 2003, Section 912.201, Insurance Code;

(6) as effective June 1, 2003, Sections 941.003(c) and 942.003(c), Insurance Code; and

(7) Article 5.33B, Insurance Code, as added by Chapter 337, Acts of the 74th Legislature, Regular Session, 1995.

#### ARTICLE 10. GENERAL TRANSITION; EFFECTIVE DATE

SECTION 10.01. This Act applies only to an insurance policy that is delivered, issued for delivery, or renewed on or after the 120th day after the effective date of this Act. A policy delivered, issued for delivery, or renewed before the 120th day after 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.

SECTION 10.02. (a) Except as provided by this section, 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.

(b) Provisions of this Act that specify an effective date take effect on the date specified in those provisions.

(c) Section 5(j), Article 5.142, Insurance Code, as added by this Act, takes effect on the first anniversary of the effective date specified in Subsection (a) of this section and expires on September 1, 2004, in accordance with Article 1 of this Act.

#### Floor Amendment No. 1

Amend **CSSB 14** as follows:

(1) In SECTION 1.01 of the bill, in the recital (page 1, line 8, House committee printing), strike "Subchapter Q" and substitute "Subchapters Q and S".

(2) In SECTION 1.01 of the bill, in the heading to added Article 5.142, Insurance Code (page 1, lines 10-11, House committee printing), strike "PERSONAL AUTOMOBILE INSURANCE COVERAGE AND".

(3) In SECTION 1.01 of the bill, in Section 1(a) of added Article 5.142, Insurance Code (page 1, line 13, House committee printing), strike "personal automobile insurance and".

(4) In SECTION 1.01 of the bill, in Section 1(b)(1) of added Article 5.142, Insurance Code (page 1, lines 16-17, House committee printing), strike "personal automobile insurance rates and".

(5) In SECTION 1.01 of the bill, in Section 1(b)(2) of added Article 5.142, Insurance Code (page 1, lines 20-21, House committee printing), strike "personal automobile and".

(6) In SECTION 1.01 of the bill, strike Section 2(a)(5) of added Article 5.142, Insurance Code (page 3, line 13 through page 4, line 4, House committee printing), and substitute the following:

(5) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write residential property insurance in this state. The term includes an affiliate, as described by this code, if that affiliate is authorized to write residential property insurance. The term does not include:

(A) the Texas Windstorm Insurance Association under Article 21.49 of this code;

(B) the FAIR Plan Association under Article 21.49A of this code; or

(C) an insurer that is not engaged in the business of residential property insurance in this state before the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003.

(7) In SECTION 1.01 of the bill, strike Section 2(a)(7) of added Article 5.142, Insurance Code (page 4, lines 7-16, House committee printing).

(8) In SECTION 1.01 of the bill, in Section 2(a)(9) of added Article 5.142, Insurance Code (page 4, line 27, House committee printing), strike "personal automobile insurance or".

(9) In SECTION 1.01 of the bill, in Section 2(a) of added Article 5.142, renumber subdivisions appropriately.

(10) In SECTION 1.01 of the bill (page 20, line 11, through page 23, line 7, House committee printing), strike Sections 3-7 of added Article 5.143, Insurance Code, and substitute the following:

Sec. 3. REDUCED FILING. For an insurer with a market share of less than five percent, the commissioner shall consider insurer and market-specific attributes, as applicable, and shall promulgate filing requirements for those insurers accordingly to accommodate premium volume and loss experience, targeted markets, limitations on coverage, and any potential barriers to market entry or growth in the market.

(11) Renumber the Sections of added Article 5.143, Insurance Code, appropriately.

(12) In SECTION 1.01 of the bill, following added Subchapter Q, Chapter 5, Insurance Code (page 24, between lines 4 and 5, House committee printing), insert:

SUBCHAPTER S. REFUND

Art. 5.146. REFUND OF EXCESSIVE OR DISCRIMINATORY PREMIUM; DISCOUNT. (a) In this article:

(1) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write residential

property insurance in this state. The term includes an affiliate, as described by this code, if that affiliate is authorized to write residential property insurance. The term does not include:

(A) the Texas Windstorm Insurance Association under Article 21.49 of this code; or

(B) the FAIR Plan Association under Article 21.49A of this code.

(2) "Personal automobile insurance" means motor vehicle insurance coverage for the ownership, maintenance, or use of a private passenger, utility, or miscellaneous type motor vehicle, including a motor home, trailer, or recreational vehicle, that is:

(A) owned or leased by an individual or individuals; and

(B) not primarily used for the delivery of goods, materials, or services, other than for use in farm or ranch operations.

(3) "Residential property insurance" means insurance coverage against loss to real or tangible personal property at a fixed location that is provided through a homeowners policy, including a tenants policy, a condominium owners policy, or a residential fire and allied lines policy.

(b) Except as provided by Subsection (d) of this article, if the commissioner determines that an insurer has charged a rate for personal automobile insurance or residential property insurance that is excessive or discriminatory, as described by Article 5.13-2, 5.101, or 5.142 of this code, the commissioner may order the insurer to:

(1) issue a refund of the excessive or discriminatory portion of the premium directly to each affected policyholder if the amount of that portion of the premium is at least 7.5 percent of the total premium charged for the coverage; or

(2) provide each affected policyholder a future premium discount in the amount of the excessive or discriminatory portion of the premium if the amount of that portion of the premium is less than 7.5 percent.

(c) On or before the 20th day after the date an order is issued under this article, an insurer may request a rate hearing to be conducted by the State Office of Administrative Hearings to determine whether the rate that is subject to the order is excessive and discriminatory. The office of public insurance counsel may participate in a hearing conducted under this subsection and present evidence at the hearings.

(d) After completion of the rate hearing under Subsection (c) of this section, the administrative law judge shall prepare a proposal for decision under Section 40.058 of this code and remand the case to the commissioner recommending:

(1) that the commissioner affirm the commissioner's order; or

(2) additional review of the order by the commissioner to be completed not later than the 10th day after the date the commissioner receives the administrative law judge's proposal, that the parties enter into negotiations, or that the commissioner take other appropriate action with respect to the order within a time period specified by the administrative law judge.

(e) An action or failure to act of the commissioner under Subsection (d) of this section is subject to appeal under Subchapter D, Chapter 36, of this code.

(f) This article does not apply to rates for personal automobile insurance or residential property insurance for which an insurer has obtained prior approval of those rates under Section 5, Article 5.142, or Section 5A, Article 5.13-2, of this code.

(g) This article does not apply to a rate subject to Section 12, Article 5.13-2, of this code. This subsection expires September 1, 2003.

(13) In ARTICLE 1 of the bill, strike PART B of the bill (page 24, lines 5-11, House committee printing) and substitute the following:

PART B. RATES FOR CERTAIN PERSONAL  
AUTOMOBILE INSURANCE

SECTION 1.02. The heading to Article 5.101, Insurance Code, is amended to read as follows:

Art. 5.101. FLEXIBLE RATING PROGRAM FOR PERSONAL AUTOMOBILE ~~[CERTAIN]~~ INSURANCE ~~[LINES]~~

SECTION 1.03. Section 1, Article 5.101, Insurance Code, is amended to read as follows:

Sec. 1. ~~[PURPOSE;]~~ APPLICABILITY. (a) ~~[The program on flexible rating is designed to help stabilize the rates charged for insurance in lines of property and casualty insurance covered by Subchapters A and C of this chapter.~~

~~[(b)] This article applies only to personal automobile insurance [does not apply to:~~

~~[(1) ocean marine insurance;~~

~~[(2) inland marine insurance;~~

~~[(3) fidelity, surety and guaranty bond insurance;~~

~~[(4) errors and omissions insurance;~~

~~[(5) directors' and officers' liability insurance;~~

~~[(6) general liability insurance;~~

~~[(7) commercial property insurance;~~

~~[(8) workers' compensation insurance;~~

~~[(9) professional liability insurance for physicians and health care providers as defined in Article 5.15-1 of this code; or~~

~~[(10) attorney's professional liability insurance].~~

~~(b) [(e)]~~ Notwithstanding Subsection (a) of this section, this article does not apply to premium rates for motor vehicle insurance computed using a mile-based rating plan under Article 5.01-4 of this code.

SECTION 1.04. Section 3, Article 5.101, Insurance Code, is amended by amending Subsection (e) and adding Subsection (r) to read as follows:

(e) An insurer may use any rate by classification within the flexibility band without prior approval by the commissioner. The rate may not include expenses disallowed under Subsection (o) of this section. Within 30 days of the effective date of the benchmark rate for a particular line, each insurer which proposes to write that line of insurance in this state during the effective period of the benchmark rate shall file with the commissioner its proposed rate by line, and by classification and territory under the rating manual promulgated by the commissioner, unless the insurer has obtained approval from the commissioner under Subsection (l) of this section to use its own rating manual. The insurer shall include in the filing any statistics to support the rates to be used by the insurer as required by rule of the commissioner, including

information necessary to evidence that the calculation of the rate does not include disallowed expenses. ~~[Rates proposed in filings made under this subsection must be just, reasonable, adequate and not excessive for the risks to which they apply.]~~ The rate takes effect on the date specified by the insurer, but not later than the 60th day after the date of filing of the rate with the commissioner. For the purpose of this section, the date the rate is received by the commissioner is the date of filing. From and after the effective date of the benchmark rate and prior to the insurer's specified effective date of a new rate, the insurer's previously filed rate shall remain in effect. Subject to the limitations contained in Subsection (p) of this section and Section 3B of this article, an insurer may continue to use its previously filed rates or may make additional rate filings based on the previous benchmark rate for new policies or policies renewing prior to the specified effective date of its new rate.

(r) An insurer who writes insurance in a line subject to this article is subject to the rating standards described by Section 3A of this article.

SECTION 1.05. Article 5.101, Insurance Code, is amended by adding Sections 3A, 3B, 3C, and 7 to read as follows:

Sec. 3A. RATING STANDARDS. (a) Rates used by insurers subject to this article may not be excessive, inadequate, unreasonable, or unfairly discriminatory for the risks to which they apply.

(b) For purposes of this section, a rate is:

(1) excessive if the rate is likely to produce a long-term profit that is unreasonably high in relation to the insurance coverage provided;

(2) inadequate if the rate is insufficient to sustain projected losses and expenses to which the rate applies, and continued use of the rate:

(A) endangers the solvency of an insurer using the rate; or

(B) has the effect of substantially lessening competition or creating a monopoly within any market; or

(3) unfairly discriminatory if the rate:

(A) cannot be actuarially justified;

(B) does not bear a reasonable relationship to the expected loss and expense experience among risks; or

(C) is based wholly or partly on the race, creed, color, ethnicity, or national origin of the policyholder or an insured.

Sec. 3B. CHANGE OF RATE WITHIN FLEXIBILITY BAND; REQUIRED FILING. Notwithstanding Section 3(e) of this article, an insurer who changes a rate used by the insurer that is established within the flexibility band shall file the changed rate with the department in the manner prescribed by rule by the commissioner.

Sec. 3C. REFUND. If the commissioner determines that rates of an insurer do not comply with the rating standards established under this article and are excessive or discriminatory, the commissioner may order the insurer to make a refund in the manner prescribed by Article 5.146 of this code.

Sec. 7. EXPIRATION. This article expires effective September 1, 2004.

(14) In ARTICLE 2 of the bill (page 38, line 22, through page 39, line 1, House committee printing), strike SECTION 2.04 and substitute the following:

SECTION 2.04. Articles 21.49-2U and 21.49-2V, Insurance Code, as added by this article, apply only to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2004. A policy delivered, issued for delivery, or renewed before that date is governed by the law as it existed immediately before January 1, 2004, and that law is continued in effect for that purpose.

(15) In SECTION 3.07 of the bill, in added Section 12(e), Article 5.13-2, Insurance Code (page 44, line 5, House committee printing), between "by rule" and the period, insert "required as provided by Subsection (b) of this section in connection with the rating criteria".

(16) In SECTION 3.07 of the bill, in added Section 12(i), Article 5.13-2, Insurance Code (page 45, line 2, House committee printing), between "disapproval" and "of the rate", insert "or reduction".

(17) In SECTION 3.07 of the bill, in added Section 12(i), Article 5.13-2, Insurance Code (page 45, line 3, House committee printing), between "disapproval" and "order", insert "or reduction".

(18) In SECTION 3.07 of the bill, in added Section 12(n), Article 5.13-2, Insurance Code (page 46, line 26, House committee printing), strike "the policyholder" and substitute "a person who is a policyholder at the time the refund is ordered".

(19) In SECTION 3.07 of the bill, in added Section 12(n), Article 5.13-2, Insurance Code (page 47, line 1, House committee printing), between "overcharge" and "plus", insert "that would have otherwise been required to be refunded".

(20) In SECTION 3.07 of the bill, in added Section 12(n), Article 5.13-2, Insurance Code (page 47, line 2, House committee printing), between "percent" and the period, insert ", as a credit to the next renewal policy premium".

(21) In SECTION 4.01 of the bill, in amended Article 5.13, Insurance Code (page 50, line 26 through page 51, line 2, House committee printing), strike the underlined language and substitute the following:

code, except that Article 5.13-2 of this code shall apply to a county mutual insurance company with respect to personal automobile and commercial automobile insurance, residential and commercial property insurance, and inland marine insurance

(22) In SECTION 4.01 of the bill, in amended Article 5.13, Insurance Code (page 51, line 25, House committee printing), strike "noncommercial".

(23) In SECTION 4.02 of the bill, in the amended heading to Article 5.13-2, Insurance Code (page 52, line 17, House committee printing), strike "COMMERCIAL INLAND MARINE" and substitute "INLAND MARINE".

(24) In SECTION 4.03 of the bill, in amended Section 1, Article 5.13-2, Insurance Code (page 52, lines 22-23, House committee printing), strike "commercial inland marine" and substitute "inland marine".

(25) In SECTION 4.03 of the bill, in amended Section 2, Article 5.13-2, Insurance Code (page 53, lines 16-17, House committee printing), strike "commercial inland marine" and substitute "inland marine".

(26) In ARTICLE 4 of the bill, strike SECTION 4.04 of the bill (page 53, line 22 through page 54, line 6, House committee printing) and substitute the following:

SECTION 4.04. Section 3, Article 5.13-2, Insurance Code, is amended to read as follows:

Sec. 3. DEFINITIONS. (a) In this article:

(1) "Disallowed expenses" includes:

(A) administrative expenses, not including acquisition, loss control, and safety engineering expenses, that exceed 110 percent of the industry median for those expenses;

(B) lobbying expenses;

(C) advertising expenses, other than for advertising:

(i) directly related to the services or products provided by the insurer; or

(ii) designed and directed at loss prevention;

(D) amounts paid by an insurer:

(i) as damages in an action brought against the insurer for bad faith, fraud, or any matters other than payment under the insurance contract; or

(ii) as fees, fines, penalties, or exemplary damages for a civil or criminal violation of law;

(E) contributions to:

(i) social, religious, political, or fraternal organizations; or

(ii) organizations engaged in legislative advocacy;

(F) except as authorized by rule by the commissioner, fees and assessments paid to advisory organizations; and

(G) any unreasonably incurred expenses, as determined by the commissioner after notice and hearing.

(2) "Filer" means an insurer that files rates, prospective loss costs, or supplementary rating information under this article.

(3) ~~(2)~~ "Insurer" means an insurer to which Article 5.13 of this code applies, but does not include the Texas Windstorm Insurance Association, the FAIR Plan Association, or the Texas Automobile Insurance Plan Association. All provisions of this article shall apply to Lloyd's plans, reciprocals and interinsurance exchanges, and county mutual insurance companies with respect to the lines of insurance described in Section 1 of this article, except that ~~However,~~ the provisions of Sections 4, 5, 6, and 7 of this article shall not apply to Lloyd's or reciprocals with respect to commercial property insurance.

(4) ~~(3)~~ "Prospective loss costs" means that portion of a rate that does not include provisions for profit or expenses, other than loss adjustment expenses, that is based on historical aggregate losses and loss adjustment expenses projected by development to their ultimate value and through trending to a future point in time.

(5) ~~(4)~~ "Rate" means the cost of insurance per exposure unit, whether expressed as a single number or as a prospective loss cost, with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, before any application of individual risk variations based on loss or expense considerations.

(6) "Rating manual" means a publication or schedule that lists rules, classifications, territory codes and descriptions, rates, premiums, and other similar information used by an insurer to determine the applicable premium charged an insured.

(7) "Residential property insurance" means insurance coverage against loss to real or tangible personal property at a fixed location that is provided through a homeowners policy, including a tenants policy, a condominium owners policy, or a residential fire and allied lines policy. [The term does not include a minimum premium.]

(8) [(5)] "Supplementary rating information" means any manual, rating schedule, plan of rules, rating rules, classification systems, territory codes and descriptions, rating plans, and other similar information used by the insurer to determine the applicable premium for an insured. The term includes factors and relativities, including [such as] increased limits factors, classification relativities, deductible relativities, premium discount, and other similar factors and rating plans such as experience, schedule, and retrospective rating.

(9) [(6)] "Supporting information" means:

(A) the experience and judgment of the filer and the experience or information of other insurers or advisory organizations relied on by the filer;

(B) the interpretation of any other information relied on by the filer;

(C) descriptions of methods used in making the rates; and

(D) any other information required by the department to be filed.

(b) For purposes of this article, a rate is:

(1) excessive if the rate is likely to produce a long-term profit that is unreasonably high in relation to the insurance coverage provided;

(2) inadequate if the rate is insufficient to sustain projected losses and expenses to which the rate applies, and continued use of the rate:

(A) endangers the solvency of an insurer using the rate; or

(B) has the effect of substantially lessening competition or creating a monopoly within any market; or

(3) unfairly discriminatory if the rate:

(A) cannot be actuarially justified;

(B) does not bear a reasonable relationship to the expected loss and expense experience among risks; or

(C) is based wholly or partly on the race, creed, color, ethnicity, or national origin of the policyholder or an insured.

(27) In ARTICLE 4 of the bill, strike SECTIONS 4.05 and 4.06 (page 54, lines 7-18, House committee printing) and substitute the following:

SECTION 4.05. Section 4, Article 5.13-2, Insurance Code, is amended by amending Subsections (b) and (d) and adding Subsection (f) to read as follows:

(b) In setting rates, an insurer shall consider:

(1) past and prospective loss experience inside this state, and outside this state if the state data are not credible;

(2) the peculiar hazards and experiences of individual risks, past and prospective, inside and outside this state;

(3) the insurer's actuarially credible historical premium, exposure, loss, and expense experience;

(4) [any applicable] catastrophe hazards within this state;

(5) operating [(3) operation] expenses, excluding disallowed expenses;

(6) [(4)] investment income;



(7) ~~(5)~~ a reasonable margin for profit ~~[and contingencies]~~; and

(8) ~~(6)~~ any other ~~[relevant]~~ factors inside and outside this state determined to be relevant by the insurer and not disallowed by the commissioner.

(d) Rates established under this article may not be excessive, inadequate, unreasonable, or unfairly discriminatory for the risks to which they apply ~~[and may not be unreasonable].~~

(f) In determining a rating territory, an insurer shall use methods based on actuarially sound principles.

SECTION 4.06. Section 5, Article 5.13-2, Insurance Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) Except as provided by Section 5A of this article, each ~~[Each]~~ insurer shall file with the commissioner all rates, applicable rating manuals, supplementary rating information, and additional [reasonable and pertinent supporting] information as required by the commissioner for risks written in this state.

(a-1) The commissioner by rule shall determine the information required to be provided in the filing, including:

(1) the categories of supporting information;

(2) the categories of supplementary rating information;

(3) any statistics or other information to support the rates to be used by the insurer, including information necessary to evidence that the computation of the rate does not include disallowed expenses; and

(4) information concerning policy fees, service fees, and other fees that are charged or collected by the insurer under Article 21.35A or 21.35B of this code.

(a-2) For an insurer with less than five percent of the market, the commissioner shall consider insurer and market-specific attributes, as applicable, and shall promulgate filing requirements accordingly to accommodate premium volume and loss experience, targeted markets, limitations on coverage, and any potential barriers to market entry or growth.

SECTION 4.07. Article 5.13-2, Insurance Code, is amended by adding Sections 5A and 8A to read as follows:

Sec. 5A. PRIOR APPROVAL REQUIRED FOR CERTAIN INSURERS. (a) The commissioner by order may require an insurer to file with the commissioner all rates, supplementary rate information, and any supporting information as prescribed by this section if the commissioner determines that:

(1) an insurer's rates require supervision because of the insurer's financial condition;

(2) an insurer's rates require supervision because of the insurer's rating practices; or

(3) a statewide insurance emergency exists.

(b) Except as provided by Subsection (k) of this section, an insurer may not use a rate until the rate has been filed with the department and approved by the commissioner as provided by this section. For purposes of this section, a rate is filed with the department on the date the rate filing is received by the department.

(c) Not later than the 30th day after the date the rate is filed with the department, the commissioner shall:

(1) approve the rate if the commissioner determines that the rate complies with the requirements of this article; or

(2) disapprove the rate if the commissioner determines that the rate does not comply with the requirements of this article.

(d) Except as provided by Subsection (f) of this section, if the rate has not been approved or disapproved by the commissioner before the expiration of the 30-day period described by Subsection (c) of this section, the rate is considered approved and the insurer may use the rate unless the rate proposed in the filing represents an increase of 12.5 percent or more from the insurer's prior filed rate.

(e) The commissioner and the insurer may not by agreement extend the 30-day period described by Subsection (c) of this section.

(f) For good cause, the commissioner may extend the period for approval or disapproval of a rate for one additional 30-day period on the expiration of the 30-day period described by Subsection (c) of this section.

(g) If the department determines that the information filed by the insurer under this article is incomplete or otherwise deficient, the department, not later than the 10th day after the date the insurer files the rate with the department, may request additional information from the insurer. If the department requests additional information from the insurer during the first 30-day review period provided under Subsection (c) of this section or under the second 30-day review period provided under Subsection (f) of this section, the period of time between the date of the department's submission of the request for additional information to the insurer and the date of the receipt of the additional information by the department from the insurer is not counted to determine what constitutes the first 30-day review period or the second 30-day review period. For purposes of this subsection, the date of the department's submission of the request for additional information is the date of the electronic mailing or telephone call or the postmarked date on the department's letter relating to the request for additional information.

(h) The commissioner shall approve the rate filing if the proposed rate is adequate, not excessive, and not unfairly discriminatory.

(i) If the commissioner approves a rate filing, the commissioner shall provide written or electronic notification of the approval to the insurer. On receipt of the notice of the commissioner's approval of a rate, the insurer may use the rate.

(j) From the date of the filing of the rate with the department to the effective date of the new rate, the insurer's previously filed rate that is in effect on the date of the filing remains in effect.

(k) After approval of a rate filing under this section, an insurer may use any rate subsequently filed by the insurer, without prior approval of the commissioner, if the subsequently filed rate does not exceed the lesser of 107.5 percent of the rate approved by the commissioner or 110 percent of any rate used by the insurer within the previous 12-month period. Filed rates under this subsection take effect on the date specified by the insurer.

(l) If the commissioner disapproves a rate filing under Subsection (c)(2) of this section, the commissioner shall issue an order in the manner prescribed by Section 7(b) of this article. The insurer is entitled to a hearing in accordance with Section 7(b) of this article.

(m) The commissioner may require an insurer to file the insurer's rates under this section until the commissioner determines that the conditions described by Subsection (a) of this section no longer exist.

Sec. 8A. INLAND MARINE FORMS AND RATES. The commissioner shall adopt rules governing the manner in which forms and rates for classifications of risks for inland marine insurance, as determined by the commissioner, are regulated.

(28) Renumber current SECTIONS 3.09, 3.10, and 3.11 of the bill, adding Sections 13, 14, and 15, Article 5.13-2, Insurance Code (page 47, line 15 through page 50, line 13, House committee printing), as SECTIONS 4.08, 4.09, and 4.10 of the bill, and renumber the SECTIONS of ARTICLE 3 of the bill appropriately.

(29) In renumbered SECTION 4.08 of the bill, in added Section 13(c), Article 5.13-2, Insurance Code (page 48, line 12, House committee printing), after "in this state.", insert "After the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003, and before the first annual adjustment by the commissioner, the commissioner may adjust the computation of the rate index under this section as the commissioner determines necessary."

(30) In renumbered SECTION 4.08 of the bill, in added Section 13(f), Article 5.13-2, Insurance Code (page 48, line 22, House committee printing), between "insurance" and "at nonstandard rates", strike "polices" and insert "policies only".

(31) In renumbered SECTION 4.08 of the bill, in added Section 13(f), Article 5.13-2, Insurance Code (page 48, line 25, House committee printing), following the period, insert: "In setting rates, an insurance company subject to this subsection must comply with the rating standards established by this article. Not later than the first day on which any change in the rates becomes effective, the company shall for informational purposes file the rates and any additional information required by the department. The commissioner by rule shall determine the information required to be provided in the filing under this subsection. The commissioner may inspect the books and records of the company at any time to ensure compliance with the rating standards. An insurance company described by this subsection is subject to Article 5.146 of this code. A county mutual insurance company not described by this section is subject to Article 21.81 of this code and is required to comply with the filing requirements of this article and Article 5.142 of this code and any other provision of this code applicable to a county mutual insurance company."

(32) In renumbered SECTION 4.08 of the bill, in the first sentence of added Section 13(h), Article 5.13-2, Insurance Code (page 49, lines 5-6, House committee printing), strike "have served or are serving" and substitute "have served exclusively or are serving exclusively".

(33) In renumbered SECTION 4.08 of the bill, in the first sentence of added Section 13(h), Article 5.13-2, Insurance Code (page 49, line 6, House committee printing), between "market" and the period, insert "and meet capitalization and solvency requirements set by the commissioner".

(34) In renumbered SECTION 4.08 of the bill, in the second sentence of added Section 13(h), Article 5.13-2, Insurance Code (page 49, lines 7-8, House committee printing), strike "as having served or serving the nonstandard market" and substitute "under this subsection".

(35) In renumbered SECTION 4.08 of the bill, in added Section 13, Article 5.13-2, Insurance Code (page 49, between lines 8 and 9, House committee printing), insert new Subsections (i) and (j) to read as follows:

(i) Notwithstanding Article 17.02 or Section 912.004 or 912.102 of this code, the commissioner may issue a new charter to a county mutual insurance company to write insurance coverage exclusively in a nonstandard market as necessary to provide:

(1) adequate capacity in that market; and

(2) reasonably affordable insurance in that market.

(j) The commissioner may adopt rules as necessary to implement this section.

(36) In renumbered SECTION 4.10 of the bill, in added Section 15, Article 5.13-2, Insurance Code (page 49, line 17, House committee printing), strike "PREMIUM CHARGES" and substitute "RATE INCREASE".

(37) In ARTICLE 4 of the bill (page 54, between lines 17 and 18) insert new SECTIONS 4.11, 4.12, and 4.13 to read as follows:

SECTION 4.11. Article 5.13-2, Insurance Code, is amended by adding Sections 16 and 17 to read as follows:

Sec. 16. RIGHTS OF PUBLIC INSURANCE COUNSEL. (a) On request to the commissioner, the public insurance counsel may review all rate filings and additional information provided by an insurer under this article. Confidential information reviewed under this subsection remains confidential.

(b) The public insurance counsel, not later than the 30th day after the date of a rate filing under this article, may object to an insurer's rate filing or the criteria relied on by the insurer to determine the rate by filing a written objection with the commissioner. The written objection must contain the reasons for the objection.

Sec. 17. ADVISORY ORGANIZATIONS. (a) An advisory organization may file with the commissioner for use by insurers loss and loss adjustment expense information. An insurer that subscribes to the advisory organization may use information filed under this subsection after the information is approved by the commissioner.

(b) An advisory organization may not publish rates for insurance subject to this article.

SECTION 4.12. A county mutual insurance company required to make informational rate filings under Section 13(f), Article 5.13-2, Insurance Code, as added by this Act, shall make an initial informational rate filing, as required by the commissioner, not later than the 30th day after the effective date of this article.

SECTION 4.13. This article takes effect September 1, 2004, except that Sections 13, 14, and 15, Article 5.13-2, Insurance Code, as added by this article, take effect on the effective date of this Act.

(38) In SECTION 7.01, in added Section 6(b)(1), Article 21.21-6, Insurance Code, strike "and the same risk" (page 60, line 22, House committee printing), and substitute "other than for the classifications applicable alike to persons of every race, color, religion, ethnicity, or national origin".

(39) In SECTION 7.01, in added Section 6(b)(2), Article 21.21-6, Insurance Code, strike "and the same risk" (page 60, line 26, House committee printing), and substitute "other than a rate reflecting the classifications applicable alike to persons of every race, color, religion, ethnicity, or national origin".

(40) In SECTION 8.05 of the bill, in added Section 15, Article 21.49A, Insurance Code (page 68, line 22), between "association" and "may not be distributed", insert "shall be used to mitigate losses, including the purchase of reinsurance and the offset of future assessments, and".

(41) In SECTION 9.01 of the bill, strike amended Article 5.01(f), Insurance Code (page 69, lines 5-14, House committee printing), and substitute the following:

(f) Notwithstanding Subsections (a) through (d) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for personal automobile insurance in this state are determined as provided by Article 5.101 of this code, and rates for commercial motor vehicle insurance in this state are determined as provided by Article 5.13-2 [the flexible rating program adopted under Subchapter M] of this code [chapter]. On and after September 1, 2004, rates for personal automobile insurance and commercial automobile insurance in this state are determined as provided by Article 5.13-2 of this code.

(42) In SECTION 9.03 of the bill, strike amended Article 5.01-2(b), Insurance Code (page 69, line 24 through page 70, line 3, House committee printing), and substitute the following:

(b) On and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for personal automobile [motor vehicle] insurance written by a Lloyd's plan insurer or a reciprocal or interinsurance exchange are determined as provided by the flexible rating program adopted under Subchapter M of this chapter. This subsection expires September 1, 2004.

(43) In SECTION 9.04 of the bill, in amended Section 4(a), Article 5.01-4, Insurance Code (page 70, line 8, House committee printing), strike "Subchapter Q [M] of this chapter" and substitute "Subchapter M of this chapter".

(44) In SECTION 9.04 of the bill, in amended Section 4(b), Article 5.01-4, Insurance Code (page 70, line 15, House committee printing), strike "Subchapter Q [M] of this chapter" and substitute "Subchapter M of this chapter".

(45) In SECTION 9.05 of the bill, strike amended Article 5.03(g), Insurance Code (page 70, line 19 through page 71, line 1, House committee printing), and substitute the following:

(g) Notwithstanding Sections (a) through (e) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for personal automobile insurance in this state are determined as provided by Article 5.101 of this code, and rates for commercial motor vehicle insurance in this state [vehicles] are determined as provided by Article 5.13-2 [Subchapter M] of this code [chapter]. On and after September 1, 2004, rates for personal automobile insurance and commercial automobile insurance in this state are determined as provided by Article 5.13-2 of this code.

(46) In SECTION 9.06 of the bill, strike amended Article 5.04(c), Insurance Code (page 71, lines 4-13, House committee printing), and substitute the following:

(c) Notwithstanding Subsections (a) and (b) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1 1992], rates for personal automobile insurance in this state are determined as provided by Article 5.101 of this code, and rates for commercial motor vehicle

insurance in this state [vehicles] are determined as provided by Article 5.13-2 [Subchapter M] of this code [chapter]. On and after September 1, 2004, rates for personal automobile insurance and commercial automobile insurance in this state are determined as provided by Article 5.13-2 of this code.

(47) In SECTION 9.07 of the bill, in added Subsection (12)(a), Article 5.06, Insurance Code (page 71, line 17, House committee printing), strike "personal".

(48) In SECTION 9.10 of the bill, strike amended Article 5.09(c), Insurance Code (page 74, lines 1-10, House committee printing), and substitute the following:

(c) Notwithstanding Subsection (a) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for personal automobile insurance in this state are determined as provided by Article 5.101 of this code, and rates for commercial motor vehicle insurance in this state [vehicles] are determined as provided by Article 5.13-2 [Subchapter M] of this code [chapter]. On and after September 1, 2004, rates for personal automobile insurance and commercial automobile insurance in this state are determined as provided by Article 5.13-2 of this code.

(49) In SECTION 9.11 of the bill, strike amended Article 5.11(c), Insurance Code (page 74, lines 13-22, House committee printing), and substitute the following:

(c) Notwithstanding Subsections (a) and (b) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for personal automobile insurance in this state are determined as provided by Article 5.101 of this code, and rates for commercial motor vehicle insurance in this state [vehicles] are determined as provided by Article 5.13-2 [Subchapter M] of this code [chapter]. On and after September 1, 2004, rates for personal automobile insurance and commercial automobile insurance in this state are determined as provided by Article 5.13-2 of this code.

(50) In SECTION 9.28 of the bill, in amended Article 5.53(g), Insurance Code (page 84, lines 21-26, House committee printing), strike the underlined language and substitute the following:

On and after September 1, 2004, rates for inland marine insurance are determined as provided by Article 5.13-2 of this code. Notwithstanding any other provision in this article, policy forms and endorsements for inland marine insurance are regulated under Article 5.13-2 of this code. An insurer may continue to use policy forms and endorsements approved by the commissioner under this article on or before the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003.

(51) In SECTION 9.29 of the bill, strike amended Article 5.96(a-1), Insurance Code (page 85, lines 4-9, House committee printing), and substitute the following:

(a-1) This [Except as provided by Section 5(d), Article 5.101, of this code, this] article does not apply to the setting of [benchmark] rates for personal automobile [motor vehicle] insurance under Article 5.101 of this code, rates for [and] fire and allied lines insurance under Subchapter Q [M] of this chapter or, on and after September 1, 2004, rates for personal automobile insurance and fire and allied lines insurance under Article 5.13-2 of this code.

(52) In SECTION 9.31(a) of the bill, strike added Section 912.002(c), Insurance Code (page 85, line 24 through page 86, line 7, House committee printing), and substitute the following:

(c) Rate regulation for a residential fire and allied lines insurance policy written by a county mutual insurance company is subject to Subchapter Q, Chapter 5. On and after September 1, 2004, rate regulation for a personal automobile insurance policy and a residential fire and allied lines insurance policy written by a county mutual insurance company is subject to Article 5.13-2. A county mutual insurance company is subject to Subchapter O, Chapter 5. The commissioner may adopt rules as necessary to implement this subsection.

(53) In SECTION 9.31(b) of the bill, strike amended Article 17.22(b), Insurance Code (page 86, lines 10-19, House committee printing), and substitute the following:

(b) Rate regulation for a residential fire and allied lines insurance policy written by a county mutual insurance company is subject to Subchapters O and Q, Chapter 5, of this code. The commissioner may adopt rules as necessary to implement this subsection. The flexible rating program created under Subchapter M, Chapter 5, of this code does not apply to county mutual insurance companies. This subsection expires June 1, 2003.

(54) In SECTION 9.33(a) of the bill, strike amended Section 941.003(b), Insurance Code (page 87, lines 12-21, House committee printing), and substitute the following:

(b) A Lloyd's plan is subject to:

- (1) Section 5, Article 1.10;
- (2) Article 1.15A;
- (3) Subchapters ~~[Subchapter]~~ A, O, Q, R, and S, Chapter 5;
- (4) Articles 5.35, 5.38, 5.39, 5.40, and 5.49;
- (5) Articles 21.21 and 21.49-8; ~~[and]~~
- (6) Sections 822.203, 822.205, 822.210, and 822.212; and
- (7) Article 5.13-2, as provided by that article.

(55) In SECTION 9.33(b) of the bill, strike added Article 18.23(c), Insurance Code (page 87, line 24 through page 88, line 4, House committee printing), and substitute the following:

(c) Rate regulation for a personal automobile insurance policy written by a Lloyd's plan is subject to Subchapter M, Chapter 5, of this code. Rate regulation for a homeowners or residential fire and allied lines insurance policy written by a Lloyd's plan is subject to Subchapter Q, Chapter 5, of this code. The commissioner may adopt rules as necessary to implement this subsection. A Lloyd's plan is subject to Subchapter O, Chapter 5, of this code. This subsection expires June 1, 2003.

(56) In SECTION 9.34(a) of the bill, strike amended Section 942.003(b), Insurance Code (page 88, lines 7-16, House committee printing), and substitute the following:

(b) An exchange is subject to:

- (1) Section 5, Article 1.10;
- (2) Articles 1.15, 1.15A, and 1.16;
- (3) Subchapters ~~[Subchapter]~~ A, O, Q, R, and S, Chapter 5;
- (4) Articles 5.35, 5.37, 5.38, 5.39, and 5.40;
- (5) Articles 21.21 and 21.49-8; ~~[and]~~
- (6) Sections 822.203, 822.205, 822.210, 822.212, 861.254(a)-(f), 861.255, 862.001(b), and 862.003; and

(7) Article 5.13-2, as provided by that article.

(57) In SECTION 9.34(b) of the bill, strike added Article 19.12(c), Insurance Code (page 88, lines 19-27, House committee printing), and substitute the following:

(c) Rate regulation for a personal automobile insurance policy written by a reciprocal or interinsurance exchange is subject to Subchapter M, Chapter 5, of this code. Rate regulation for a homeowners or residential fire and allied lines insurance policy written by a reciprocal or interinsurance exchange is subject to Subchapter Q, Chapter 5, of this code. The commissioner may adopt rules as necessary to implement this subsection. A reciprocal or interinsurance exchange is subject to Subchapter O, Chapter 5, of this code. This subsection expires June 1, 2003.

(58) Strike SECTION 9.37 of the bill (page 89, lines 11-23, House committee printing), and substitute the following:

SECTION 9.37. (a) On the effective date of this Act, the following laws are repealed:

- (1) Articles 5.03-2, 5.03-3, 5.03-4, and 5.03-5, Insurance Code;
- (2) Articles 5.26(h), 5.33A, 5.33C, 5.50, and 40.061, Insurance Code;
- (3) Section 5(b), Article 5.13-2, Insurance Code;
- (4) Section 4C, Article 5.73, Insurance Code; and
- (5) Article 5.33B, Insurance Code, as added by Chapter 337, Acts of the

74th Legislature, Regular Session, 1995.

(b) Effective September 1, 2004, Sections 941.003(c) and 942.003(c), Insurance Code, are repealed.

(59) In ARTICLE 9 of the bill, insert the following appropriately numbered new SECTIONS and renumber ARTICLE 9 of the bill appropriately:

SECTION 9. \_\_. (a) Effective June 1, 2003, Section 912.201, Insurance Code, is amended to read as follows:

Sec. 912.201. SCHEDULE OF CHARGES. A county mutual insurance company shall file with the department a schedule of the amounts the company charges a policyholder or an applicant for a policy, regardless of the term the company uses to refer to those charges, including "rate," "policy fee," "inspection fee," "membership fee," or "initial charge." An insurer shall file the schedules required under this section according to rules promulgated by the commissioner.

(b) Until June 1, 2003, Section 6, Article 17.25, Insurance Code, is amended to read as follows:

Sec. 6. FILE SCHEDULE OF CHARGES. Such companies shall file with the Board a schedule of its rates, the amount of policy fee, inspection fee, membership fee, or initial charge by whatever name called, to be charged its policyholders or those applying for policies. Items required under this section shall be filed according to rules promulgated by the commissioner.

SECTION 9. \_\_. Section 1(2), Article 21.81, Insurance Code, is amended to read as follows:

(2) "Authorized insurer" means any insurer authorized by the Texas Department of Insurance to write motor vehicle liability coverage under the provisions of Chapter 5 of this code. Except as provided by Section 13(f), Article 5.13-2, of this code, the [The] term does not include an insurer organized under Chapter 17 of this code.



(60) Insert the following new ARTICLE, appropriately numbered, and renumber the ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_ . INFORMATIONAL RATE FILINGS  
FOR CERTAIN COMPANIES

SECTION \_\_\_\_ . Chapter 911, Insurance Code, as effective June 1, 2003, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. INFORMATIONAL RATE FILINGS  
FOR RESIDENTIAL PROPERTY INSURANCE

Sec. 911.351. APPLICABILITY. This subchapter applies only to the regulation of rates for residential property insurance issued by a farm mutual insurance company.

Sec. 911.352. DEFINITION. In this subchapter, "residential property insurance" means insurance coverage against loss to real or tangible personal property at a fixed location that is provided through a residential fire and allied lines policy.

Sec. 911.353. INFORMATIONAL RATE FILINGS. A farm mutual insurance company shall file with the department, for informational purposes only, all rates and additional information as required by the commissioner for residential property insurance risks written in this state.

Sec. 911.354. RATING STANDARDS. (a) Rates established by a farm mutual insurance company for residential property insurance may not be excessive, inadequate, unreasonable, or unfairly discriminatory for the risks to which they apply.

(b) For purposes of this subchapter, a rate is:

(1) excessive if the rate is likely to produce a long-term profit that is unreasonably high in relation to the insurance coverage provided;

(2) inadequate if the rate is insufficient to sustain projected losses and expenses to which the rate applies, and continued use of the rate:

(A) endangers the solvency of a company using the rate; or

(B) has the effect of substantially lessening competition or creating a monopoly within any market; or

(3) unfairly discriminatory if the rate:

(A) cannot be actuarially justified;

(B) does not bear a reasonable relationship to the expected loss and expense experience among risks; or

(C) is based in whole or in part on the race, creed, color, ethnicity, or national origin of the policyholder or an insured.

SECTION \_\_\_\_ . Chapter 912, Insurance Code, as effective June 1, 2003, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. INFORMATIONAL RATE FILINGS  
FOR PERSONAL AUTOMOBILE INSURANCE

Sec. 912.351. APPLICABILITY. This subchapter applies only to the regulation of rates for personal automobile insurance issued by a county mutual insurance company.

Sec. 912.352. DEFINITION. In this subchapter, "personal automobile insurance" means motor vehicle insurance coverage for the ownership, maintenance, or use of a private passenger, utility, or miscellaneous type motor vehicle, including a motor home, trailer, or recreational vehicle, that is:

(1) owned or leased by an individual or individuals; and

(2) not primarily used for the delivery of goods, materials, or services, other than for use in farm or ranch operations.

Sec. 912.353. INFORMATIONAL RATE FILINGS. A county mutual insurance company shall file with the department, for informational purposes only, all rates and additional information as required by the commissioner for personal automobile insurance risks written in this state.

Sec. 912.354. RATING STANDARDS. (a) Rates established by a county mutual insurance company for personal automobile insurance may not be excessive, inadequate, unreasonable, or unfairly discriminatory for the risks to which they apply.

(b) For purposes of this subchapter, a rate is:

(1) excessive if the rate is likely to produce a long-term profit that is unreasonably high in relation to the insurance coverage provided;

(2) inadequate if the rate is insufficient to sustain projected losses and expenses to which the rate applies, and continued use of the rate:

(A) endangers the solvency of a company using the rate; or

(B) has the effect of substantially lessening competition or creating a monopoly within any market; or

(3) unfairly discriminatory if the rate:

(A) cannot be actuarially justified;

(B) does not bear a reasonable relationship to the expected loss and expense experience among risks; or

(C) is based in whole or in part on the race, creed, color, ethnicity, or national origin of the policyholder or an insured.

Sec. 912.355. REFUND OF EXCESSIVE OR DISCRIMINATORY PREMIUM; DISCOUNT. A county mutual insurance company required to make informational rate filings under this subchapter is, with regard to the rates required to be filed, subject to Article 5.146.

Sec. 912.356. EXPIRATION. This subchapter expires September 1, 2004.

SECTION \_\_\_\_. A farm mutual insurance company required to make informational rate filings under Subchapter H, Chapter 911, Insurance Code, as added by this Act, shall make an initial informational rate filing as required by the commissioner not later than the 30th day after the effective date of this Act.

SECTION \_\_\_\_. (a) A county mutual insurance company required to make informational rate filings under Subchapter H, Chapter 912, Insurance Code, as added by this Act, shall make an initial informational rate filing as required by the commissioner not later than the 30th day after the effective date of this Act.

(b) The expiration of Subchapter H, Chapter 912, Insurance Code, as added by this Act, does not affect an action or proceeding against a county mutual insurance company subject to that law for a failure to comply with that law before its expiration, regardless of when the action or proceeding was commenced, and that law is continued in effect for this purpose.

SECTION \_\_\_\_. This article takes effect June 1, 2003.

## **Floor Amendment No. 2**

Amend Floor Amendment No. 1 by Smithee to **CSSB 14** by inserting the following items to the amendment:

( ) In SECTION 1.01 of the bill, in added Section 2(a)(3)(A), Article 5.142 (page 2, line 12, House committee printing), strike "110 percent of the industry median for those expenses" and substitute "the industry median for those expenses by 10 percent or more".

( ) In SECTION 1.01 of the bill, in added Section 5(j), Article 5.142, Insurance Code (page 12, lines 7-8, House committee printing), strike "the lesser of 107.5 percent of the rate approved by the commissioner or 110 percent of any rate used by the insurer within the previous 12-month period", and substitute "the lesser of 7.5 percent more than the rate approved by the commissioner or 10 percent more than any rate used by the insurer within the previous 12-month period".

( ) In renumbered SECTION 4.08 of the bill, in added Section 13, Article 5.13-2, Insurance Code (page 48, lines 18-20, House committee printing), strike Subsection (e) and substitute the following:

(e) For purposes of this section, "nonstandard rates" means rates that are 30 percent or more above the standard rate index as determined by the commissioner under this section.

### Floor Amendment No. 3

Amend Floor Amendment No. 1 by Smithee to **CSSB 14** as follows:

(1) Insert the following New Items, appropriately numbered:

( ) Strike Sections 3.02-3.04 of the bill (page 41, line 1, through page 42, line 16) and substitute the following:

SECTION 3.02. The heading of Article 5.13-2, Insurance Code, is amended to read as follows:

Art. 5.13-2. RATES AND FORMS FOR CERTAIN [GENERAL LIABILITY AND COMMERCIAL] PROPERTY AND CASUALTY INSURANCE [COVERAGE].

SECTION 3.03. Sections 1 and 2, Article 5.13-2, Insurance Code, are amended to read as follows:

Sec. 1. PURPOSE. This article governs the regulation of insurance described by Section 2 of this article [~~general liability, commercial property, which shall include farm and ranch owners and farm and ranch policies, all commercial casualty, and medical professional liability insurance rates and forms. It does not govern automobile, fidelity, surety, or guaranty bonds~~]. The purposes of this article are to:

(1) promote the public welfare by regulating insurance rates to prohibit excessive, inadequate, or unfairly discriminatory rates;

(2) promote availability of insurance;

(3) promote price competition among insurers to provide rates and premiums that are responsive to competitive market conditions;

(4) prohibit price-fixing agreements and other anticompetitive behavior by insurers;

(5) regulate the insurance forms used for lines of insurance subject to this article to ensure that they are not unjust, unfair, inequitable, misleading, or deceptive; and

(6) provide regulatory procedures for the maintenance of appropriate information reporting systems.

Sec. 2. SCOPE. (a) This article applies to all lines of the following insurance written under policies or contracts of insurance issued by an insurer authorized to engage in the business of insurance in this state:

- (1) general liability insurance;
- (2) [;] commercial property insurance, including farm and ranch insurance and farm and ranch owners insurance;
- (3) personal and[~~-all~~] commercial casualty insurance, except as provided by Subsection (b) of this section;
- (4) [~~-and~~] medical professional liability insurance;
- (5) fidelity and surety bonds;
- (6) personal umbrella insurance;
- (7) personal liability insurance;
- (8) guaranteed auto protection (GAP) insurance;
- (9) involuntary unemployment insurance;
- (10) financial guaranty insurance;
- (11) inland marine insurance;
- (12) rain insurance;
- (13) hail insurance on farm crops; and
- (14) commercial automobile insurance [~~written under policies or contracts of insurance issued by a licensed insurer, other than a fidelity, surety, or guaranty bond or an automobile insurance policy~~].

(b) Except as otherwise specifically provided by this article, this article does not apply to a line of insurance regulated under Subchapter A or C of this chapter.

(c) The commissioner shall adopt rules governing the manner in which forms and rates for the various classifications of risks insured under inland marine insurance, as determined by the commissioner, are regulated.

SECTION 3.04. Section 3(2), Article 5.13-2, Insurance Code, is amended to read as follows:

(2) "Insurer" means an insurer to which Article 5.13 of this code applies, but does not include the Texas Windstorm Insurance Association or the Texas FAIR Plan Association. However, the provisions of Sections 4, 5, 6, and 7 of this article shall not apply to Lloyd's or reciprocals with respect to commercial property insurance, and the provisions of Sections 4, 5, 6, 7, and 8 of this article shall not apply to Lloyd's or reciprocals with respect to inland marine insurance, rain insurance, or hail insurance on farm crops. The provisions of Sections 4, 5, 6, and 7 of this article shall apply to county mutual insurance companies with respect to commercial automobile insurance.

(2) Strike items (23)-(25) of the amendment (page 10, lines 2-13) and substitute the following:

( ) Strike SECTIONS 4.02-4.03 of the bill (page 52, line 14, through page 53, line 21) and substitute the following:

SECTION 4.02. The heading of Article 5.13-2, Insurance Code, is amended to read as follows:

Art. 5.13-2. RATES AND FORMS FOR CERTAIN [GENERAL LIABILITY AND COMMERCIAL] PROPERTY AND CASUALTY INSURANCE [COVERAGE].

SECTION 4.03. Sections 1 and 2, Article 5.13-2, Insurance Code, are amended to read as follows:

Sec. 1. PURPOSE. This article governs the regulation of insurance described by Section 2 of this article [~~general liability, commercial property, which shall include farm and ranch owners and farm and ranch policies, all commercial casualty, and medical professional liability insurance rates and forms. It does not govern automobile, fidelity, surety, or guaranty bonds~~]. The purposes of this article are to:

- (1) promote the public welfare by regulating insurance rates to prohibit excessive, inadequate, or unfairly discriminatory rates;
- (2) promote availability of insurance;
- (3) promote price competition among insurers to provide rates and premiums that are responsive to competitive market conditions;
- (4) prohibit price-fixing agreements and other anticompetitive behavior by insurers;
- (5) regulate the insurance forms used for lines of insurance subject to this article to ensure that they are not unjust, unfair, inequitable, misleading, or deceptive; and
- (6) provide regulatory procedures for the maintenance of appropriate information reporting systems.

Sec. 2. SCOPE. (a) This article applies to all lines of the following insurance written under policies or contracts of insurance issued by an insurer authorized to engage in the business of insurance in this state:

- (1) general liability insurance;
- (2) residential and~~[,]~~ commercial property insurance, including farm and ranch insurance and farm and ranch owners insurance;
- (3) personal and~~[,all]~~ commercial casualty insurance, except as provided by Subsection (b) of this section;
- (4) ~~[,and]~~ medical professional liability insurance;
- (5) fidelity and surety bonds;
- (6) personal umbrella insurance;
- (7) personal liability insurance;
- (8) guaranteed auto protection (GAP) insurance;
- (9) involuntary unemployment insurance;
- (10) financial guaranty insurance;
- (11) inland marine insurance;
- (12) rain insurance;
- (13) hail insurance on farm crops; and
- (14) personal and commercial automobile insurance [~~written under policies or contracts of insurance issued by a licensed insurer, other than a fidelity, surety, or guaranty bond or an automobile insurance policy~~].

(b) The commissioner shall adopt rules governing the manner in which forms and rates for the various classifications of risks insured under inland marine insurance, as determined by the commissioner, are regulated.

(3) In item (26) of the amendment, strike amended Section 3(a)(3), Article 5.13-2, Insurance Code (page 11, lines 19-27) and substitute the following:

(2) [(2)] "Insurer" means an insurer to which Article 5.13 of this code applies, but does not include the Texas Windstorm Insurance Association or the Texas FAIR Plan Association, or the Texas Automobile Insurance Plan Association. All provisions of this article shall apply to Lloyd's plans, reciprocals and interinsurance exchanges, and county mutual insurance companies with respect to the lines of insurance described in Section 2 of this article, except that [However,] the provisions of Sections 4, 5, 6, and 7 of this article shall not apply to Lloyd's or reciprocals with respect to commercial property insurance, and the provisions of Sections 4, 5, 6, 7, and 8 of this article shall not apply to Lloyd's or reciprocals with respect to inland marine insurance, rain insurance, or hail insurance on farm crops.

(4) Strike item (50) of the amendment (page 24, line 27 through page 25, line 7) and substitute the following:

( ) Strike SECTION 9.28 of the bill (page 84, line 9, through page 85, line 1) and substitute the following SECTIONS, appropriately numbered:

SECTION \_\_\_\_ . Article 5.52, Insurance Code, is amended to read as follows:

Art. 5.52. PROVISIONS GOVERNING LIGHTNING, WINDSTORM, HAIL, INVASION, RIOT, VANDALISM, STRIKES, LOCKOUTS AND OTHER INSURANCE; "EXPLOSION" DEFINED. (a) The writing of insurance against loss by lightning, tornado, windstorm, hail, smoke or smudge, cyclone, earthquake, volcanic eruption, rain, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lockout, explosion, water or other fluid or substance, resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes or other conduits or containers, or resulting from casual water entering through leaks or openings in buildings, or by seepage through building walls, including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits or containers, and the rates to be collected therefor in this State, and all matters pertaining to such insurance except as hereinafter set out as to [~~inland~~] marine insurance as defined by Article 5.53 of this code, [~~rain insurance and insurance against loss by hail on farm crops,~~] shall be governed and controlled by the provisions of Articles 5.25 to 5.48, inclusive, and also Articles 5.50 to 5.51, inclusive, of this subchapter and Article 5.67 of Subchapter D of this Chapter, in the same manner and to the same extent as fire insurance and fire insurance rates are now affected by the provisions of said articles of this code.

(b) Notwithstanding Subsection (a) of this section, rain insurance and hail insurance on farm crops are governed by Article 5.13-2 of this code.

(c) The term "explosion" as used in this article [above] shall not include insurance against loss of or damage to any property of the insured, resulting from the explosion of or injury to (a) any boiler, heater, or other fired pressure vessel; (b) any unfired pressure vessel; (c) pipes or containers connected with any of said boilers or vessels; (d) any engine, turbine, compressor, pump, or wheel; (e) any apparatus generating, transmitting or using electricity; (f) any other machinery or apparatus connected with or operating by any of the previously named boilers, vessels or

machines; nor shall same include the making of inspections and issuance of certificates of inspections upon any such boiler, apparatus or machinery, whether insured or otherwise. Said term shall include, but shall not be limited to (1) the explosion of pressure vessels (except steam boilers of more than fifteen pounds pressure) in buildings designed and used solely for residential purposes by not more than four (4) families; (2) explosion of any kind originating outside of the insured buildings or outside of the building containing the property insured; (3) explosion of pressure vessels which do not contain steam or which are not operated with steam coils or steam jets; (4) electric disturbance causing or concomitant with an explosion in public service or public utility property.

SECTION \_\_\_\_\_. Article 5.53, Insurance Code, is amended to read as follows:

Art. 5.53. APPLICATION TO ~~[INLAND]~~ MARINE INSURANCE~~[- RAIN INSURANCE, OR HAIL INSURANCE ON FARM CROPS; DEFINITIONS; RATES AND RATING PLANS FILED; POLICY FORMS; CHECKING OFFICES]~~. The provisions of this article shall apply to all insurance which is now or hereafter defined by statute, by rules of the commissioner ~~[ruling of the Board of Insurance Commissioners]~~, or by lawful custom, as ~~[inland]~~ marine insurance~~[- rain insurance, or insurance against loss by hail on farm crops]~~. None of the terms contained in ~~[this article and]~~ Article 5.52 shall be deemed to include insurance of vessels or craft, their cargoes, marine builder's risk, marine protection and indemnity, or other risk commonly insured under marine as distinguished from inland marine insurance policies.

The ~~[Whenever used in this article the]~~ term "Marine Insurance" shall mean and include insurance and reinsurance against any and all kinds of loss or damage to the following subject matters of insurance interest therein:

Marine Insurance. Hulls, vessels and craft of every kind, aids to navigation, dry docks and marine railways, including marine builders' and repairers' risks, and whether complete or in process of or awaiting construction; also all marine protection and indemnity risks; also all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests, and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation on or under any seas, lakes, rivers, or other waters or in the air, or on land in connection with or incident to export, import or waterborne risks, or while being assembled, packed, crated, baled, compressed or similarly prepared for such shipment or while awaiting the same, or during any delays, storage, transshipment or reshipment incident thereto, including the insurance of war risks in respect to any or all of the aforesaid subject matters of insurance.

~~[(a) As to all classes of insurance contained in this article, for which class rates or rating plans are customarily fixed by rating bureaus or associations of underwriters, rates or rating plans, together with applicable policy forms and endorsements, shall be filed by all authorized insurers writing such classes with the Board in such manner and form as it shall direct; and all rates on risks not falling within a recognized class fixed by any such bureau or association, together with applicable policy forms and endorsements, shall be similarly filed. Due consideration shall be given to past and~~

prospective loss experience within and outside the State, including catastrophe hazard, to a reasonable margin for profit and contingencies, and to all other relevant factors within and outside the State.

~~[(b) As soon as reasonably possible after the filing has been made, the Board shall in writing approve or disapprove the same; provided that any filing of class rates or rating plans, together with applicable policies and endorsements, shall be deemed approved unless disapproved within thirty (30) days; provided the Board may by official order postpone action for such further time not exceeding thirty (30) days, as it deems necessary for proper consideration; and provided further that rates on risks not falling within a recognized class fixed by a rating bureau or association of underwriters, together with applicable policies and endorsements, shall be deemed approved from the date of filing to the date of formal approval or disapproval. The Board may investigate rates not required to be filed under the provisions of this article and may require the filing of any particular rate, together with applicable policies and endorsements, not otherwise required to be filed.~~

~~[(c) Any filing by an insurer of a rate less than an approved rate relative to any of the rates mentioned in sub-division (a) of this article may be used by such insurer after same shall have been approved by the Board, or after same shall have been on file with the Board without action for thirty (30) days.~~

~~[(d) If at any time the Board finds that an approved filing no longer meets the requirements of this article, it may after hearing issue an order withdrawing its approval thereof.~~

~~[(e) An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the Board to accept such filings on its behalf. A corporation, an unincorporated association, a partnership, or an individual, whether located within or outside the State, may be licensed as a rating organization in connection with any of the sorts of insurance mentioned in this article, subject to the conditions, not inconsistent herewith, prescribed by law for such organizations in connection with other kinds of insurance, provided two or more insurers have designated it to act for them as to any such class or classes of insurance in the manner prescribed herein. An insurer may belong or subscribe to rating bureaus or associations for other types of insurance.~~

~~[(f) Insurers may, subject to the supervision of the Board, operate any checking office or offices deemed necessary or advisable.~~

~~[(g) The writing of inland marine insurance, rain insurance and insurance against loss by hail on farm crops, shall be governed by the provisions of Articles 5.25 to 5.48, inclusive, and also Articles 5.50 to 5.51, inclusive, of this subchapter and Article 5.67 of Subchapter D. of this chapter, in the same manner and to the same extent as fire insurance and fire insurance rates are now affected by the provisions of said articles, except that wherever in any of said articles reference is made to making, fixing, prescribing, determination or promulgation by the Board of rates or policy forms or endorsements, the provisions of this article shall control. Notwithstanding any other provision of this subchapter, the flexible rating program created under Subchapter M of this chapter does not apply to this article.~~



~~(4)~~ The provisions of Chapter 5 of this code, other than this article, shall not apply to marine insurance as defined ~~[other than inland marine insurance governed]~~ by this article.

SECTION \_\_\_\_\_. Section 1(a), Article 5.53-A, Insurance Code, is amended to read as follows:

(a) Any company licensed to engage in the business of fire insurance and its allied lines, or inland marine insurance, or both, is authorized to write home warranty insurance or home protection insurance in this state.

(5) Insert the following new items, appropriately numbered:

( ) Following existing SECTION 9.29 of the bill (page 85, between lines 9 and 10), insert the following new SECTIONS, appropriately numbered:

SECTION \_\_\_\_\_. Subsections (a), (b), (c), (d), (f), (g), (h), (i), (j), (k), (l), and (m), Article 5.97, Insurance Code, are amended to read as follows:

(a) The department ~~[State Board of Insurance]~~ may take action on filings for standard and uniform rates, rating plans, manual rules, classification plans, statistical plans, and policy and endorsement forms, or any modification of any of these for the lines of insurance regulated in Subchapter B, Chapter 5, of this code ~~[and for the regulated lines of insurance in Article 5.53 and Article 5.53-A of this code]~~ under the procedure specified in this article.

(b) Any interested person may initiate proceedings before the commissioner ~~[board]~~ with respect to any matter specified in Section (a) of this article by filing a petition with the department ~~[State Board of Insurance]~~ that includes the following:

(1) specific identification of the matter that is proposed to be adopted, approved, amended, or repealed;

(2) the wording of the matter proposed to be adopted, approved, amended, or repealed; and

(3) justification for the proposed action in sufficient particularity to inform the commissioner ~~[board]~~ and any interested person of the petitioner's reasons and arguments.

(c) A copy of each petition initiating a proceeding shall be marked with the date it was received by the department ~~[State Board of Insurance]~~ and shall be made available for public inspection at the office of the chief clerk of the department ~~[board]~~ throughout the period the petition is pending. Except for emergency matters acted on under Section (j) of this article, the commissioner ~~[board]~~ may not act on a petition until it has been available for public inspection for at least 15 days after the date of filing and notice has been given in accordance with this section. Not later than the 10th day before the date the commissioner ~~[board]~~ takes action on any rule, rating plan, classification plan, statistical plan, or policy or endorsement form under this article, the department ~~[board]~~ shall publish in the Texas Register ~~[a notice of the meeting or hearing at which the action will be taken. The notice must include]~~ a brief summary of the substance of the proposed rule, rating plan, classification plan, statistical plan, or policy or endorsement form, and a statement that the full text of the rule, rating plan, classification plan, statistical plan, or policy or endorsement form is available for review in the office of the chief clerk of the department ~~[State Board of Insurance]~~.

(d) Any interested person may request [~~the board to hold~~] a hearing before the commissioner [~~it~~] acts on a pending petition. Except as provided by Article 5.97A of this code, the commissioner [~~board~~] has discretion whether or not to hold such a hearing.

(f) The commissioner may [~~board shall~~] hold a hearing to consider the proposal or may [~~shall~~] enter an order implementing or denying the proposal. If the commissioner [~~board~~] denies a proposal, the commissioner [~~it~~] shall specify the reasons for the denial in the commissioner's [~~its~~] order.

(g) On its own motion, the department [~~board~~] may initiate a proceeding with respect to any matter specified in Section (a) of this article.

(h) If a hearing is scheduled to consider a proposal, the department [~~board~~] shall publish notice in the Texas Register not less than 10 days before the hearing and shall state the time, place, and legal authority for the hearing and the matters to be considered.

(i) After entering an order with respect to any matter specified in Section (a) of this article, the department [~~board~~] shall file a notice of the commissioner's [~~its~~] action for publication in the adopted rule section of the Texas Register. In addition, before the effective date of the action, the department [~~board~~] shall cause notice of the order to be mailed to the applicant, to all insurers writing the affected line of insurance in this state, and to all other persons who have made timely written request for notification. Failure to mail this notice will not invalidate any action taken.

(j) The commissioner's [~~board's~~] action takes effect 15 days after the date that notice of the action is published in the Texas Register or on a later specified date. If the commissioner [~~board~~] finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law requires the commissioner's [~~its~~] action to be effective before the end of the 15-day period, the commissioner [~~it~~] may take emergency action to be effective at an earlier time. The commissioner's [~~board's~~] action on an emergency matter may be effective for 120 days, and renewable once for a period not exceeding 60 days immediately following the 120-day period. The permanent adoption of an identical change is not precluded.

(k) Any person aggrieved by an order of the commissioner [~~board~~] is entitled to redress as provided by [~~Article 5.15,~~] Article 5.23[~~, Article 5.53, or Article 5.53-A~~] of this code[~~, whichever is applicable to the line of insurance addressed in the order~~].

(l) Chapters 2001 and 2002, Government Code, do [~~The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), does~~] not apply to commissioner or department [~~board~~] action taken under this article.

(m) The department [~~board~~] or the office of public insurance counsel may require that a person who has filed a petition under Subsection (b) of this article or who has otherwise presented materials to the department [~~board~~] in connection with a proceeding under this article provide additional information to the department [~~board~~] or office, including any statistical, actuarial, or other information on which the petition or other materials were based.

SECTION \_\_\_\_\_. Subsection (c), Article 21.28-E, Insurance Code, is amended to read as follows:

(c) The provisions of this article shall not apply to marine insurance as defined [~~other than inland marine insurance governed~~] by Article 5.53.

SECTION \_\_\_\_\_. Sections 4(b)(4) and (5), Article 21.49-3, Insurance Code, are amended to read as follows:

(4) After the initial year of operation, rates, rating plans, and rating rules, and any provision for recoupment should be based upon the association's loss and expense experience, together with such other information based upon such experience as the department [board] may deem appropriate. The resultant premium rates shall be on an actuarially sound basis and shall be calculated to be self-supporting.

(5) In the event that sufficient funds are not available for the sound financial operation of the association, in addition to assessments paid pursuant to the plan of operation in accordance with Section 3(c)(2) of this article and contributions from the policyholder's stabilization reserve fund, all members shall, on a basis authorized by the department [board], as long as the department [board] deems it necessary, contribute to the financial requirements of the association in the manner provided for in Section 5. Any assessment or contribution shall be reimbursed to the members with interest at a rate to be approved by the department [board]. Pending recoupment or reimbursement of assessments or contributions paid to the association by a member, the unrepaid balance of such assessments and contributions may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Section 862.001 [Article 6.12] of this code.

SECTION \_\_\_\_\_. Section 5(a), Article 21.55, Insurance Code, is amended to read as follows:

(a) This article does not apply to:

- (1) workers' compensation insurance;
- (2) mortgage guaranty insurance;
- (3) title insurance;
- (4) fidelity, surety, or guaranty bonds;
- (5) marine insurance as defined [~~other than inland marine insurance governed~~] by Article 5.53 of this code; or
- (6) a guaranty association created and operating under Article 9.48 of this code.

SECTION \_\_\_\_\_. Article 21.56(e), Insurance Code, is amended to read as follows:

(e) The provisions of this article shall not apply to marine insurance as defined [~~other than inland marine insurance governed~~] by Article 5.53 of this code.

( ) Following existing SECTION 9.30 of the bill (page 85, between lines 15 and 16), insert the following new SECTION, appropriately numbered:

SECTION \_\_\_\_\_. Article 21.79E, Insurance Code, is amended to read as follows:  
Art. 21.79E. CREDIT INVOLUNTARY UNEMPLOYMENT INSURANCE.

Any insurer authorized to write any form of casualty insurance in this state shall also be authorized to write group or individual credit involuntary unemployment insurance indemnifying a debtor for installment or other periodic payments on the indebtedness while the debtor is involuntarily unemployed, including policy forms and endorsements which define involuntary unemployment to provide coverage and a premium charge for interruption or reduction of a debtor's income during periods of leave (paid or otherwise) authorized by the Federal Family and Medical Leave Act of

1993 (29 U.S.C. Section 2601 et seq.), as amended, or other state or federal laws. Such insurance may be written alone or in conjunction with credit life insurance, credit accident and health insurance, or both, in policies issued by any authorized insurer, but not in contravention of the Texas Free Enterprise and Antitrust Act of 1983 (Chapter 15, Business & Commerce Code). Rates and forms for such insurance may be made and filed in accordance with Article 5.13-2 [~~Articles 5.14 and 5.15~~] of this code.

(6) In item (58) of the amendment, in amended SECTION 9.57 of the bill, in Subdivision (4) (page 28, line 6), after the semicolon, strike "and".

(7) In item (58) of the amendment, in amended SECTION 9.57 of the bill, in Subdivision (5), between "1995" and the period (page 28, line 10), insert:

;

(6) Articles 5.14, 5.15, and 5.15B, Insurance Code;

(7) Article 5.97(e), Insurance Code; and

(8) Section 4(b)(2), Article 21.49-3, Insurance Code

(8) Insert the following new item to the amendment:

( ) Renumber SECTIONS of Article 9 of the bill accordingly.

(9) Renumber items of the amendment accordingly.

#### **Floor Amendment No. 4**

Amend **CSSB 14** in SECTION 1.01 of the bill, in added Subsection (b), Section 3, Article 5.143, Insurance Code (page 20, line 20, House committee printing), by striking "capacity" and substituting "share".

#### **Floor Amendment No. 10**

Amend **CSSB 14**, in SECTION 1.01 of the bill, by striking added Section 2(3)(E), Article 5.142, Insurance Code, (page 2, line 26 to page 3, line 3 (House committee printing) and substituting the following:

(E) contributions to:

(i) social, religious, political, or fraternal organizations;

(ii) candidates for political office; or

(iii) organizations engaged in legislative advocacy;

#### **Floor Amendment No. 14**

Amend **CSSB 14** as follows:

(1) On page 4, strike lines 1 through 4.

(2) On page 42, strike lines 17 through page 43, line 3.

#### **Floor Amendment No. 16**

Amend **CSSB 14** as follows:

Amend SECTION 1.01, Sec. 2. DEFINITIONS, page 6, line 10-16 to read as follows:

"(3) unfairly discriminatory if the rate:

(A) cannot be actuarially justified or otherwise justified because it does not bear a reasonable relationship to the expected loss and expense experience among risks; or

(B) is based on a risk that is classified, in whole or in part, on the race, color, creed, ethnicity or national origin of a person."

### **Floor Amendment No. 30**

Amend **CSSB 14** as follows:

(1) On page 6, line 17 between "(a)" and "An" insert "Notwithstanding any other law, an insurer shall comply with Art. 21.49-2U,".

(2) Strike SECTION 3.07 of the bill by adding a new Article to the bill, appropriately numbered, as follows:

SECTION 2.01. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.49-2U to read as follows:

#### Art. 21.49-2U. USE OF CREDIT SCORING IN CERTAIN PERSONAL LINES OF INSURANCE

Sec. 1. No personal automobile or residential property insurer or agent may use credit scoring for underwriting or rating.

Sec. 2. "Credit scoring" means an underwriting guideline or rating factor based in whole or in part on information related to an individual's credit, credit worthiness, credit standing, credit capacity, credit history, or financial responsibility. The term includes, but is not limited to, an insurance score and any numerical representation of the insurance risk an individual presents, using the individual's attributes derived from a credit report or credit information or other information in a formula to assess insurance risk on an actuarial or statistical basis.

Sec. 3. This article applies to all insurers, including a reciprocal or interinsurance exchange, farm mutual, county mutual insurance company, Lloyd's plan company, and any other entity writing personal automobile or residential property insurance.

### **Floor Amendment No. 33**

Amend **CSSB 14** as follows:

(1) On page 14 add the following at the end of the new subsection (h) on line 15: "The arbitrator selected by the Department shall have at least five years experience in insurance rate making, shall not have worked for, or provided services to, any insurance company in the previous three years.

(2) On page 46, line 7, add after the period: "The arbitrator selected by the Department shall have at least five years experience in insurance rate making, shall not have worked for, or provided services to, any insurance company in the previous three years.

### **Floor Amendment No. 35**

Amend **CSSB 14** as follows:

In SECTION 1.01, Sec. 6 DISAPPROVAL OF RATE on page 14, line 25, between "not" and "discriminatory," insert "unfairly."

### **Floor Amendment No. 37**

Amend **CSSB 14** on page 19, after line 17, by adding a new Section 20 to added Article 5.142, Insurance Code, to read as follows:

Sec. 20. OPTIONAL PREMIUM DISCOUNT. (a) An insurer that issues a residential property insurance policy in this state may provide a discount in the premiums that would otherwise be charged for the policy if the policyholder has installed a water leak detection system that meets the building and performance standards for mold reduction in Section 430.002, Property Code.

(b) The commissioner shall establish by rule the amount of a premium discount applicable under this section based on sound actuarial principles.

### **Floor Amendment No. 43**

Amend **CSSB 14**, House committee printing, as follows:

(1) Insert a new ARTICLE in the bill, to read as follows, and renumber the ARTICLES and SECTIONS of the bill appropriately:

#### ARTICLE \_\_\_\_ . RESIDENTIAL PROPERTY INSURANCE DISCOUNTS

SECTION \_\_\_\_ .01. Section 6(a), Article 5.33A, Insurance Code, is amended to read as follows:

(a) A person's property qualifies for a homeowners insurance premium reduction if the property:

(1) meets the following minimum specifications:

(A) exterior doors must be solid core doors that are 1-3/8 inches thick and must be secured by dead-bolt locks;

(B) metal doors must be secured by dead-bolt locks;

(C) double doors must meet the specifications provided by Subdivision (1) of this subsection, must have the inactive door secured by header and threshold bolts that penetrate metal strike plates, and in the case of glass located within 40 inches of header and threshold bolts, must have the bolts flush-mounted in the edge of the door;

(D) sliding glass doors must be secured by secondary locking devices to prevent lifting and prying;

(E) dutch doors must have concealed flush-bolt locking devices to interlock upper and lower halves and must be secured by a dead-bolt lock;

(F) garage doors must be equipped with key-operated locking devices;

and  
(G) windows must be secured by auxiliary locking devices; or

(2) is equipped with an electronic burglar alarm that meets the following requirements:

(A) all exterior structure openings are contacted or the system is equipped with motion detectors or glass breakage sensors;

(B) the system includes an interior and exterior siren;

(C) all equipment is U.L. approved and is monitored by a U.L. approved central station; and

(D) sales, service, installation, and monitoring of the system are done in compliance with Chapter 1702, Occupations Code [the Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes)].

SECTION \_\_\_\_ .02. This article takes effect September 1, 2003, and applies only to a discount for a policy of homeowners' insurance that is delivered, issued for delivery, or renewed on or after January 1, 2004.

(2) In SECTION 9.37 of the bill, in Subdivision (2) of that SECTION (page 89, line 14, house committee printing), strike "5.33A,".

#### **Floor Amendment No. 44**

Amend **CSSB 14** (House committee printing), in ARTICLE 2 of the bill, by adding the following appropriately numbered SECTION and renumbering existing SECTIONS accordingly:

SECTION 2.\_\_\_\_. Subchapter E, Chapter 38, Insurance Code, is amended by adding Section 38.208 to read as follows:

Sec. 38.208. PUBLIC INFORMATION. (a) Notwithstanding Section 552.110, Government Code, all information, including information categorized by zip code, collected by the department under this subchapter regarding the number of policies written by an insurer, the number of vehicles covered by an insurer, the number of premiums collected by an insurer, the amount of membership fees collected by an insurer, and the number of cancellations issued by an insurer:

(1) is public information;

(2) is not confidential and is not subject to any exceptions to disclosure under Chapter 552, Government Code; and

(3) cannot be withheld from disclosure under any other law.

(b) This section applies to any insurer authorized to write personal automobile insurance or residential property insurance in this state, including a reciprocal or interinsurance exchange, a county mutual insurance company, and a Lloyd's plan.

#### **Floor Amendment No. 48**

Amend **CSSB 14** (House committee report) by adding the following appropriately numbered ARTICLE to the bill:

ARTICLE \_\_\_\_ . N.A.I.C. FEES

SECTION \_\_\_\_ . Section 802.055, Insurance Code, as effective June 1, 2003, is amended to read as follows:

Sec. 802.055. COSTS PAID BY INSURANCE COMPANY. [(a)] An insurance company shall pay all [the] costs of preparing and furnishing to the National Association of Insurance Commissioners the information required under Section 802.052, including any related filing fees.

[(b) Except as provided by Subsection (a), costs relating to providing the information required under Section 802.052 may not be assessed against an insurance company.]

#### **Floor Amendment No. 49**

Amend **CSSB 14** by adding new SECTIONS appropriately numbered to read as follows:

SECTION \_\_\_\_ . SECTION 1. Subchapter C, Chapter 5, Insurance Code, is amended by adding Article 5.41-3 to read as follows:

Art. 5.41-3. COMMERCIAL GROUP PROPERTY INSURANCE. (a) An insurer may write commercial group property insurance for a group of businesses or for an association that constitutes a large risk as that term is described by Section 8(f), Article 5.13-2, of this code if:

(1) the members of a group of businesses have clearly identifiable underwriting characteristics; or

(2) the members of an association are engaged in similar undertakings.

(b) An insurer, before using a policy form for a group of businesses or an association described by Subsection (a) of this article in which each member of the group or association is not a large risk as that term is described by Section 8(f), Article 5.13-2, of this code, shall file the policy form with the commissioner. A filing made under this subsection is for informational purposes only.

(c) An insurer, in accordance with Sections 3 through 7, Article 5.13-2 of this code, shall file with the commissioner all rates, supplementary rating information, and pertinent supporting information for commercial group property insurance written under this article in this state.

(d) An insurer filing a policy form or rates and related information under Subsection (b) or (c) of this article shall clearly identify the group of businesses or the association to be insured.

SECTION \_\_\_\_\_. This Act codifies existing industry practices.

### **Floor Amendment No. 53**

Amend **CSSB 14** by inserting the following appropriately numbered ARTICLE and renumbering appropriately:

ARTICLE \_\_\_\_\_. RATES FOR PROFESSIONAL LIABILITY INSURANCE  
FOR PHYSICIANS AND HEALTH CARE PROVIDERS

SECTION \_\_\_\_\_.01. Chapter 5, Insurance Code, is amended by adding Subchapter T to read as follows:

SUBCHAPTER T. RATES FOR PROFESSIONAL LIABILITY  
INSURANCE FOR PHYSICIANS AND HEALTH CARE PROVIDERS

Art. 5.161. FINDINGS. The legislature finds that:

(1) the cost of professional liability insurance for physicians and health care providers, as defined by Section 1.03(a), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), has been a significant factor in the reduced availability of health care in this state;

(2) legislation under consideration by the Regular Session of the 78th Legislature should eliminate or significantly reduce the cost of claims under policies of professional liability insurance for physicians and health care providers, and legislation by future legislatures may have the same effect;

(3) while the monetary effect of these legislative changes can be actuarially determined within a reasonable degree of certainty, insurers will delay implementation of rate reductions until they have data evidencing actual loss experience;

(4) delay in implementation of rate reductions will result in a windfall for the insurers benefited by the changes described by this article, and this benefit should be passed on to insureds; and

(5) legislative action in the public interest and within the police power of the state is required to eliminate unnecessary delays to pass these benefits on to the insured physicians and health care providers of this state.

Art. 5.162. SCOPE OF SUBCHAPTER. (a) This subchapter applies to any insurer that is authorized to engage in business in this state and that is authorized to write professional liability insurance for physicians and health care providers, including:

(1) a Lloyd's plan;

(2) a reciprocal or interinsurance exchange;



(3) the joint underwriting association established under Article 21.49-3 of this code; and

(4) a self-insurance trust established under Article 21.49-4 of this code.

(b) It is the intent of the legislature that all insurers, as defined by this article, pass through the savings that accrue from the changes described by Article 5.161 of this code to their policyholders on a prospective basis. To monitor compliance with this legislative directive, the commissioner may require information in rate filings, special data calls, informational hearings, and any other means consistent with other provisions of this code applicable to the affected insurers. Information provided under this subsection is privileged and confidential to the same extent as the information is privileged and confidential under this code or other laws for other insurers described by this article licensed and writing the same line of insurance in this state.

(c) This subchapter applies only to professional liability insurance for physicians and health care providers.

#### Art. 5.163. EQUITABLE RATE REDUCTION

Sec. 1. HEARING. (a) Not later than September 1 of each year, the commissioner shall hold a rulemaking hearing under Chapter 2001, Government Code, to determine the percentage of equitable reductions in insurance rates required on an individual basis of each insurer writing professional liability insurance for physicians and health care providers.

(b) Not later than October 1 of each year, the commissioner shall issue rules mandating the appropriate rate reductions to rates for professional liability insurance for physicians and health care providers and developed without consideration of the effect of the changes described by Article 5.161 of this code.

(c) The commissioner shall set the percentage of the rate reduction for professional liability insurance for physicians and health care providers and may set different rate reductions for different types of policies. The commissioner's order establishing the rate reductions must be based on the evidence adduced at the rulemaking hearing, including the adequacy of the rate at the time of the hearing. Rates resulting from the rate reductions imposed by this article must comply with Section 3(d), Article 5.15-1, of this code.

(d) The rate reductions adopted under this section are applicable to each policy or coverage delivered, issued for delivery, or renewed on and after January 1, 2004, and to each policy or coverage delivered, issued for delivery, or renewed on and after the 90th day after the date of each subsequent rule adopted under this section. An insurer, as defined by Article 5.162 of this code, shall apply the rate reduction to the rates used by the insurer.

(e) Any rule or order of the commissioner that determines, approves, or sets a rate reduction under this section and is appealed or challenged remains in effect during the pendency of the appeal or challenge. During the pendency of the appeal or challenge, an insurer shall use rates that reflect the rate reduction provided in the order being appealed or challenged. The rate reduction is lawful and valid during the appeal or challenge.

Sec. 2. ADMINISTRATIVE RELIEF. (a) Except as provided by Subsection (b) of this section, a rate filed under Articles 5.13-2 and 5.15-1 of this code for professional liability insurance for physicians and health care providers on and after

January 1, 2004, and a rate filed under those articles on and after the 90th day following the effective date of a subsequent rule adopted under Section 1(b) of this article, shall reflect each rate reduction imposed under Section 1 of this article.

(b) Notwithstanding Articles 5.13-2 and 5.15-1 of this code, the commissioner shall, after notice and opportunity for hearing, disapprove a filed rate, without regard to whether the rate complies with Articles 5.13-2 and 5.15-1 of this code, if the commissioner finds that the filed rate does not reflect the rate reduction imposed under Section 1 of this article. A proceeding under this section is a contested case under Chapter 2001, Government Code.

(c) The commissioner may approve a filed rate that reflects less than the full amount of the rate reduction imposed by Section 1 of this article if the commissioner determines based on a preponderance of the evidence presented by an insurer that:

(1) the actual or anticipated loss experience for the insurer's rating classifications is or will be different than the presumptive rate reduction;

(2) the insurer will be financially unable to continue writing in a particular line of insurance;

(3) the rate reduction required under this article would likely result in placing the insurer in a hazardous financial condition described by Section 2, Article 1.32, of this code; or

(4) the resulting rates for the insurer would be unreasonable or confiscatory to the insurer.

Sec. 3. DURATION OF REDUCTION. Unless the commissioner grants relief under Section 2 of this article, each rate reduction required under Section 1 of this article remains in effect for the period specified in the commissioner's rule or order.

Sec. 4. MODIFICATION. The commissioner may, by bulletin or directive, based on the evidence accumulated by the commissioner before the bulletin or directive is issued, modify a rate reduction mandated by the commissioner under this article if a final, unappealable judgment of a court with appropriate jurisdiction stays the effect of, enjoins, or otherwise modifies or declares unconstitutional any legislation described by Article 5.161 of this code on which the commissioner based the rate reduction.

Sec. 5. HEARINGS AND ORDERS. Notwithstanding Chapter 40 of this code, a rulemaking hearing under this article shall be held before the commissioner or the commissioner's designee. The rulemaking procedures established by this section do not apply to any other rate promulgation proceeding.

Sec. 6. PENDING RATE MATTERS. A rate filed pursuant to a commissioner's order issued before May 1, 2003, is not subject to the rate reductions required by this article before January 1, 2004.

Sec. 7. RECOMMENDATIONS TO LEGISLATURE. The commissioner shall assemble information, conduct hearings, and take other appropriate measures to assess and evaluate changes in the marketplace resulting from the implementation of this article and to report findings and recommendations to the legislature.

Art. 5.164. CONTINGENT ROLLBACK. (a) If a \$250,000 cap on noneconomic damages in all health care liability claims, without exception, becomes constitutional by voter approval of an amendment to the Texas Constitution or is determined to be constitutional by the supreme court, an insurer, as defined by Article

5.162 of this code, that delivers, issues for delivery, or renews a policy of professional liability insurance for physicians or health care providers in this state on or after the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional may not charge more for the policy than 85 percent of the amount the insurer charged that insured for the same coverage immediately before the effective date of the constitutional amendment or the date that the cap was determined to be constitutional, or, if the insurer did not insure that insured immediately before that date, 85 percent of the amount the insurer would have charged that insured, provided that the rate was adequate and not artificially inflated prior to the determination of constitutionality. An insurer may petition the commissioner for an exception to the rate reduction. A proceeding under this article is a contested case under Chapter 2001, Government Code. The commissioner shall not grant the exception unless the insurer proves by a preponderance of the evidence that the rate reduction is confiscatory. If the insurer meets this evidentiary burden, the commissioner may grant the exception only to the extent that the reduction is confiscatory. The contingent rate rollback required by this article does not apply to a policy or coverage delivered, issued for delivery, or renewed for a public hospital in this state.

(b) If the commissioner makes no determination as to a rate reduction in accordance with Section 1, Article 5.163, of this code, then an insurer may not charge an insured for professional liability insurance for physicians and health care providers issued or renewed on or after the second anniversary of the 30th day after the effective date of the constitutional amendment containing a \$250,000 cap on noneconomic damages in all health care liability claims or the date the cap was determined to be constitutional and before the third anniversary of the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional an amount that exceeds 80 percent of the amount the insurer charged or would have charged the insured for the same coverage.

(c) If the commissioner makes no determination as to a rate reduction in accordance with Section 1, Article 5.163, of this code, then an insurer may not charge an insured for professional liability insurance for physicians and health care providers issued or renewed on or after the third anniversary of the 30th day after the effective date of the constitutional amendment containing a \$250,000 cap on noneconomic damages in all health care liability claims or the date the cap was determined to be constitutional and before the fourth anniversary of the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional an amount that exceeds 75 percent of the amount the insurer charged or would have charged the insured for the same coverage.

#### Art. 5.165. FILING OF RATE INFORMATION WITH DEPARTMENT; REPORT TO LEGISLATURE

Sec. 1. PURPOSE. The purpose of this article is to require insurers writing professional liability insurance for physicians and health care providers in this state to annually file with the commissioner of insurance rates and supporting data, including current rates and estimated rates to be charged in the year following the filing date for the purpose of the preparation of a summary report for submission to each legislature and the determination by the commissioner of equitable rate reductions under Article

5.163 of this code. Information submitted under this article must be sufficient for the commissioner to determine the extent of equitable rate reductions under Article 5.163 of this code. The commissioner's report shall contain a review of the rates, presented in a manner that protects the identity of individual insurers:

(1) to inform the legislature as to whether the rates are just, adequate, and reasonable and not excessive or unfairly discriminatory; and

(2) to assist in the determination of the most effective and efficient regulatory system for professional liability insurance for physicians and health care providers in Texas.

Sec. 2. DEFINITIONS. In this article:

(1) "Insurer" means an insurer described by Article 5.162 of this code.

(2) "Supplementary rating information" means any manual, rating schedule, plan of rules, rating rules, classification systems, territory codes and descriptions, rating plans, and other similar information used by the insurer to determine the applicable premium for an insured. The term includes factors and relativities, such as increased limits factors, classification relativities, deductible relativities, premium discount, and other similar factors and rating plans such as experience, schedule, and retrospective rating.

(3) "Security" or "securities" has the meaning assigned by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes).

Sec. 3. RATE INFORMATION. (a) Insurers must file rates for professional liability insurance for physicians and health care providers and supporting information with the commissioner in accordance with the requirements determined by the commissioner under this article.

(b) Filings made by each insurer must be sufficient to respond to the commissioner's request for information under this article and must provide both current rates and estimated rates for the year following the required filing date of this article based on information reasonably known to the insurer at the time of filing.

(c) The insurer shall file, in a format specified by the commissioner, including an electronic format:

(1) all rates for professional liability insurance for physicians and health care providers, supplementary rating information, underwriting guidelines, reasonable and pertinent supporting information for risks written in the state, and all applicable rating manuals;

(2) actuarial support, including all statistics, data, or other information to support the rates, supplementary rating information, and underwriting guidelines used by the insurer;

(3) the policy fees, service fees, and other fees that are charged under Article 21.35B of this code;

(4) information on the insurer's losses from investments in securities, whether publicly or privately traded, including investments in the securities of companies required by any oversight agency to restate earnings within the 24 months preceding the filing date, possessed and used by the insurer to determine premiums or underwriting for professional liability insurance for physicians and health care providers, as this information relates to the rates described by Section 1 of this article;

(5) information on the insurer's costs of reinsurance possessed and used by the insurer to determine premiums or underwriting for professional liability insurance for physicians and health care providers, as this information relates to the rates described by Section 1 of this article;

(6) a complete explanation, and an electronic copy, of all computer models used by the insurer not protected by a contract with a third party; and

(7) a complete explanation of any changes to underwriting guidelines, rates, and supplementary rating information since the last filing under this article.

(d) The commissioner shall determine the date on which the filing is due.

(e) The commissioner may require additional information as provided by Section 4 of this article.

(f) The commissioner shall issue an order specifying the information that insurers must file to comply with this article and the date on which the filing is due.

(g) The commissioner is not required to hold a hearing before issuing the order required under Subsection (f) of this section.

(h) The commissioner shall notify an affected insurer of the order requiring the rate filing information under this section on the day the order is issued.

Sec. 4. ADDITIONAL INFORMATION. After the initial rate submission under Section 3 of this article, the commissioner may require an insurer to provide additional, reasonable information for purposes of the clarification or completeness of the initial rate submission.

Sec. 5. USE OF FILED RATE INFORMATION. (a) Information filed by an insurer with the department under this article that is confidential under a law that applied to the insurer before the effective date of this article remains confidential and is not subject to disclosure under Chapter 552, Government Code, except that the information may be disclosed as provided by Section 552.008, Government Code, relating to information for legislative purposes. Information disclosed pursuant to Section 552.008, Government Code, shall be provided in a commonly used electronic format, including in spreadsheet or comma-delimited format, if so requested. The information may not be released to the public except in summary form in the report required under Section 6 of this article.

(b) Subsection (a) of this section does not preclude the use of information filed under this article as evidence in prosecuting a violation of this code. Confidential information described by Subsection (a) of this section that is used in prosecuting a violation is subject to a protective order until all appeals of the case have been exhausted. If an insurer is found, after the exhaustion of all appeals, to have violated this code, a copy of the confidential information used as evidence of the violation is no longer presumed to be confidential.

Sec. 6. REPORT. (a) The commissioner shall, on a date determined by the commissioner, submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature on the information collected from the filings required under this article. The report may be created based on a sample of the information provided under Section 3 of this article.

(b) The report required under this section shall provide a summary review of the rates currently charged and estimated to be charged over the year following the date of the report, presented in a manner that protects the identity of individual insurers:

(1) to inform the legislature as to whether the rates are just, adequate, and reasonable and not excessive or unfairly discriminatory; and

(2) to assist the legislature in the determination of the most effective and efficient regulatory system for professional liability insurance for physicians and health care providers in this state.

Sec. 7. NOTIFICATION; NONCOMPLIANCE. The commissioner shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature of the names of the insurers that the commissioner requested to make the rate filings under this article and the names of the insurers that did not respond in whole or in part to the commissioner's request. This notification shall be made by separate letter on the fourth day following the date on which the commissioner determines the filing is due under Section 3(f) of this article.

Sec. 8. APPLICATION OF CERTAIN LAW. Chapter 40 of this code does not apply to an action of the commissioner under Section 3(f) of this article.

Sec. 9. FAILURE TO COMPLY. An insurer that fails to comply with any request for information issued by the commissioner under this article is subject, after notice and opportunity for hearing, to sanctions as provided by Chapters 82 and 84 of this code.

SECTION \_\_\_\_ .02. The commissioner of insurance shall commence a hearing under Section 1, Article 5.163, Insurance Code, as added by this article, on September 1, 2003, and shall issue rules mandating any appropriate rate reductions under Section 1, Article 5.163, Insurance Code, not later than October 1, 2003.

#### **Floor Amendment No. 54**

Amend Floor Amendment No. 53 by Rose to **CSSB 14** by adding the following appropriately numbered SECTIONS to the amendment and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_ . Article 21.49-4, Insurance Code, is amended by amending Subsections (d), (e), (g), (h), (i), and (j), and adding Subsection (k) to read as follows:

(d) The trust investment powers and limitations shall be the same as those of any state bank with trust powers. The trust shall adopt rules [~~and regulations~~] to guarantee all contingent liabilities in the event of dissolution.

(e) The trust is not engaged in the business of insurance under this code and other laws of this state and the provisions of any chapters or sections of this code are declared inapplicable to a trust organized and operated under this article, except as identified in this article, provided that the Texas Department [~~State Board~~] of Insurance may require any trust created under this article to satisfy reasonable minimum requirements to insure the capability of the trust to satisfy its contractual obligations.

(g) The trust shall file [~~for informational purposes only~~] all rates and forms with the Texas Department of Insurance. [~~State Board of Insurance~~] Such rate and form filings are subject to the rate and form requirements of Article 5.13-2, Insurance Code.

(h) The trust shall file with the Texas Department of Insurance [~~State Board of Insurance~~] all liability claims reports which are required pursuant to Sections 38.151-38.162 [~~Articles 1.24A and 1.24B~~], Insurance Code.

(i) If the trust is found to be in violation of or to have failed to comply with any provision of this code or any duly promulgated rule [~~or regulation~~] of the Texas Department of Insurance, [~~State Board of Insurance which is declared~~] applicable to a trust organized and operated under this article, the department [~~State Board of Insurance,~~] may order sanctions pursuant to Sections 82.001-82.003 and 82.051-82.056 [~~7, Article 1.10,~~] Insurance Code, [~~may order sanctions~~] for such violation.

(j) The trust shall file its independently audited annual financial statement with the Texas Department of Insurance pursuant to Article 1.15A, Insurance Code [~~State Board of Insurance; this audit shall not be considered an examination document~~].

(k) The trust is subject to the examination authority of the Texas Department of Insurance pursuant to Article 1.15, Insurance Code.

SECTION \_\_\_\_\_. Article 21.49-4(f), Insurance Code, is repealed.

### **Floor Amendment No. 56**

Amend **CSSB 14** by inserting the following new ARTICLE, numbered appropriately, and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_\_. CERTAIN INSURANCE TRUSTS

SECTION \_\_\_\_\_.01. Article 21.49-4(b), Insurance Code, is amended to read as follows:

(b) An incorporated association, the purpose of which, among other things, shall be to federate and bring into one compact organization the entire profession licensed to practice medicine and surgery or dentistry in the State of Texas, or a portion of the profession licensed to practice medicine who are practicing a particular speciality within the practice of medicine or surgery in the state or are practicing within a particular region of the state [~~and to unite with similar associations of other states to form a nationwide medical association or dental association~~], may create a trust to self-insure physicians or dentists and by contract or otherwise agree to insure other members of the organization or association against health care liability claims and related risks on complying with the following conditions:

(1) the organization or association must have been in continuing existence for a period of at least two years [~~prior to the effective date of this Act~~];

(2) establishment of a health care liability claim trust or other agreement to provide coverage against health care liability claims and related risks; and

(3) employment of appropriate professional staff and consultants for program management.

### **Floor Amendment No. 58**

Amend **CSSB 14** by inserting the following the new ARTICLE, appropriately numbered, and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_\_. HOLOCAUST VICTIMS

SECTION \_\_\_\_\_. Section 1, Article 21.74, Insurance Code, is amended by amending Subdivisions (1) and (2) and adding Subdivision (4) to read as follows:

(1) "Holocaust victim" means a person who was killed or injured, or who lost real or personal property or financial assets, as the result of discriminatory laws, policies, or actions directed against any discrete group of which the person was a member, during the period of 1920 to 1945, inclusive, in Germany, areas occupied by Germany, ~~or~~ countries allied with Germany, or countries that were sympathizers with Germany.

(2) "Insurer" means an insurance company or other entity engaged in the business of insurance or reinsurance in this state. The term includes:

(A) a capital stock company, a mutual company, or a Lloyd's plan; and

(B) any parent, subsidiary, reinsurer, successor in interest, managing general agent, or affiliated company, at least 50 percent of the stock of which is in common ownership with an insurer engaged in the business of insurance in this state.

(4) "Proceeds" means the face value or other payout value of insurance policies and annuities plus reasonable interest to date of payment without diminution for wartime or immediate postwar currency devaluation.

SECTION \_\_\_\_\_. Article 21.74, Insurance Code, is amended by adding Sections 2A and 2B to read as follows:

Sec. 2A. FILINGS AND CERTIFICATES OF INSURANCE. (a) This section applies to each insurer engaging in business in the state that, directly or through a related company, sold to persons in Europe insurance policies described by Section 1 of this article or dowry or educational insurance policies that were in effect during the period of 1920 to 1945, whether the sale occurred before or after the insurer and the related company became related.

(b) Each insurer shall file or cause to be filed with the commissioner the following information:

(1) the number of insurance policies described by Subsection (a) of this section sold by the insurer or a related company;

(2) the holder, beneficiary, and current status of the policies; and

(3) the city of origin, domicile, or address for each policyholder listed in the policies.

(c) Each insurer shall certify:

(1) that the proceeds of the policies described by Subsection (a) of this section have been paid to the designated beneficiaries or their heirs in circumstances in which that person or those persons, after diligent search, could be located and identified;

(2) that the proceeds of the policies, in circumstances in which the beneficiaries or heirs could not, after diligent search, be located or identified, have been distributed to Holocaust survivors or to qualified charitable nonprofit organizations for the purpose of assisting Holocaust survivors;

(3) that a court of law has certified in a legal proceeding resolving the rights of unpaid policyholders and their heirs and beneficiaries a plan for the distribution of the proceeds; or

(4) that the proceeds have not been distributed and the amount of those proceeds.

(d) The commissioner by rule shall require that insurers update the information submitted to the commissioner under this section at reasonable intervals.



Sec. 2B. ESTABLISHMENT AND MAINTENANCE OF REGISTRY; PUBLIC ACCESS. (a) The commissioner shall establish and maintain within the department a central registry containing records and information relating to insurance policies described by Section 2A(a) of this article of Holocaust victims, living and deceased. The registry shall be known as the Holocaust Era Insurance Registry.

(b) The commissioner by rule shall establish appropriate mechanisms to ensure public access to the registry.

(c) Information contained in the registry:

(1) is public information;

(2) is not subject to any exceptions to disclosure under Chapter 552, Government Code; and

(3) cannot be withheld from disclosure under any other law.

SECTION \_\_\_\_\_. Not later than the 180th day after the effective date of this Act, an insurer subject to Article 21.74, Insurance Code, as amended by this Act, shall file the information and certification required by Section 2A of that article.

### **Floor Amendment No. 60**

Amend **CSSB 14**, by inserting a new ARTICLE in the bill, appropriately numbered, to read as follows:

ARTICLE \_\_\_\_\_. RATING TERRITORIES

SECTION \_\_\_\_01. Chapter 5, Insurance Code, is amended by adding Subchapter U to read as follows:

SUBCHAPTER U. RATING TERRITORIES FOR CERTAIN LINES

Art. 5.171. RATING TERRITORIES. (a) Notwithstanding any other provision of this code, an insurer may not use a rating territory that is smaller than a county unless the county is subdivided and the rate for any sub-territory within that county is not greater than 15 percent higher than the rate used in any other sub-territory in the county.

(b) For residential property insurance, the commissioner may allow a greater rate difference on the basis of weather-related exposure to loss.

(c) The commissioner may allow greater rate differences for personal automobile insurance only in the manner prescribed by commissioner rule.

### **Floor Amendment No. 61**

Amend **CSSB 14** (House committee printing) by adding the following appropriately numbered section and renumbering the remaining sections of the bill as appropriate:

SECTION \_\_\_\_\_. Sec \_\_\_\_\_. RESTRICTIONS ON USE OF CLAIMS HISTORY FOR WATER DAMAGE. (a) Notwithstanding any other law, an insurer may not use a prior water damage claim filed by a person as a basis for determining the rate to be paid by the person for insurance coverage or for determining whether to issue, renew, or cancel an insurance policy to or for the person if the person:

(1) properly remediated the prior water damage; and

(2) had the remediation inspected and certified by a person or entity knowledgeable and experienced in the remediation of water damage.

(b) An insurer may not use a prior water damage claim filed regarding specific property as a basis for determining the rate to be paid by a person for insurance coverage for that property or for determining whether to issue, renew, or cancel an insurance policy to or for a person seeking insurance coverage for that property if the prior water damage was properly remediated and was inspected and certified by a person knowledgeable and experienced in remediation of water damage.

(c) An insurer may require the inspection and certification of a remediation described by subsection (a) or (b) of this section to be conducted by a person or entity approved by the insurer to inspect and certify the remediation of water damage. An insurer requiring the inspection and certification of a remediation described by Subsection (a) or (b) of this section to be conducted by a person or entity approved by the insurer must ensure that sufficient approved persons or entities are available to conduct necessary inspections and certifications in this state. A person or entity approved by an insurer may charge the applicant for coverage or policyholder a fee, not to exceed \$75, for the required inspection and certification of the remediation. The insurer shall pay any additional amount charged by the approved person or entity in connection with the inspection and certification.

### **Floor Amendment No. 62**

Amend Floor Amendment No. 61 by Geren to **CSSB 14** to read as follows:

On page 2, starting on line 5 through line 12, after the word "insurer" substitute the following:

"must:

(1) ensure that sufficient approved persons or entities are available to conduct necessary inspections and certifications in this state.

(2) file with the department the insurers requirements for the remediation described by subsections (a) and (b) of this section.

(d) A person or entity approved by an insurer to conduct the inspection and certification of a remediation described by subsections (a) or (b) of this section may charge the applicant for coverage or policyholder a fee, not to exceed \$75, for the required inspection and certification of the remediation. The insurer shall pay any additional amount charged by the approved person or entity in connection with the inspection and certification.

(e) an insurer may not use the requirements described by subsection (c)(2) before the commissioner receives and approves the requirements.

(f) the commissioner may adopt rules necessary to implement this section.

### **Floor Amendment No. 63**

Amend **CSSB 14** (House committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering existing ARTICLES accordingly:

ARTICLE \_\_\_\_\_. MOTOR VEHICLE INSURANCE COVERAGE  
FOR CERTAIN FAMILY MEMBERS

SECTION \_\_\_\_\_.01. Subchapter A, Chapter 5, Insurance Code, is amended by adding Article 5.06-3A to read as follows:

Art. 5.06-3A. COVERAGE FOR CERTAIN MINORS NOT AUTOMATIC. (a) A motor vehicle liability insurance policy that provides coverage for an insured named in the policy and for members of the named insured's household does not automatically cover a minor who is a member of the named insured's household solely because the minor obtains a driver's license.

(b) The insured named in a motor vehicle liability insurance policy described by Subsection (a) of this article must inform the insurer issuing the policy that a minor has obtained a driver's license and that coverage for the minor is desired before the coverage takes effect.

SECTION \_\_\_\_\_.02. Subchapter A, Chapter 5, Insurance Code, is amended by adding Article 5.06-3B to read as follows:

Art. 5.06-3B. REQUIRING COVERAGE FOR ENTIRE FAMILY. (a) An insurer may not require a policyholder to insure all members of the policyholder's family who are of driving age under one motor vehicle liability insurance policy.

(b) An insurer may not refuse to issue a motor vehicle liability insurance policy to a prospective policyholder solely because all members of the policyholder's family who are of driving age will not be insured under one motor vehicle liability insurance policy issued by the insurer.

SECTION \_\_\_\_\_.03. This article applies only to a motor vehicle insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2004. A motor vehicle insurance policy that is delivered, issued for delivery, or renewed before January 1, 2004, is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

#### **Floor Amendment No. 64**

Amend Floor Amendment No. 63 by Wise on page 1, between lines 18 and 19, by inserting:

(c) An insurer is not liable under a motor vehicle liability insurance policy with respect to the liability of a licensed minor who is not covered under the policy and with respect to which there is a driver exclusion signed by the named insured.

#### **Floor Amendment No. 65**

Amend **CSSB 14** (House committee printing) by inserting the following appropriately numbered ARTICLE into the bill and renumbering existing ARTICLES of the bill appropriately:

#### ARTICLE \_\_\_\_\_. MEDICAL LIABILITY INSURANCE UNDERWRITING ASSOCIATION

SECTION \_\_\_\_\_.01. Section 4(b)(5), Article 21.49-3, Insurance Code, is amended to read as follows:

(5) In the event that sufficient funds are not available for the sound financial operation of the association, in addition to assessments paid pursuant to the plan of operation in accordance with Section 3(c)(2) of this article and contributions from the policyholder's stabilization reserve fund, all members shall, on a basis authorized by the commissioner [board], as long as the commissioner [board] deems it necessary, contribute to the financial requirements of the association in the manner provided for in Section 5. Any assessment or contribution shall be reimbursed to the members, or to the state to the extent that the members have recouped their assessments using

premium tax credits as provided under Subsection (b)(3) of this section, with interest at a rate to be approved by the commissioner, subject to the approval of the commissioner [board]. Pending recoupment or reimbursement of assessments or contributions paid to the association by a member, the unrepaid balance of such assessments and contributions may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Article 6.12 of this code.

### Floor Amendment No. 66

Amend **CSSB 14** by inserting a new ARTICLE in the bill, appropriately numbered, to read as follows and renumbering the subsequent ARTICLES of the bill appropriately:

#### ARTICLE \_\_\_\_ . WINDSTORM INSURANCE

SECTION \_\_\_\_ .01. Section 3(f), Article 21.49, Insurance Code, is amended to read as follows:

(f) "Insurable Property" means immovable property at fixed locations in a catastrophe area or corporeal movable property located therein (as may be designated in the plan of operation) which property is determined by the Association, pursuant to the criteria specified in the plan of operation to be in an insurable condition against windstorm, hail and/or fire and explosion as appropriate, as determined by normal underwriting standards; provided, however, that insofar as windstorm and hail insurance is concerned, any structure located within a catastrophe area, commenced on or after the 30th day following the publication of the plan of operation, not built or continuing in compliance with any requirements [building specifications] set forth in the plan of operation shall not be an insurable risk under this Act except as otherwise provided under this Act. A structure, or an addition thereto, which is constructed in conformity with plans [~~and specifications~~] that comply with the requirements [specifications] set forth in the plan of operation at the time construction commences shall not be declared ineligible for windstorm and hail insurance as a result of subsequent changes [~~in the building specifications~~] set forth in the plan of operation. When repair of damage to a structure involves replacement of items covered in requirements [the building specifications as] set forth in the plan of operation, such repairs must be completed in a manner to comply with those requirements [such specifications] for the structure to continue within the definition of Insurable Property for windstorm and hail insurance. Nothing in this Act shall preclude special rating of individual risks as may be provided in the plan of operation. For purposes of this Act, all structures, other than a condominium, apartment, duplex, or other multifamily residence, or a hotel or resort facility, which are located within those areas designated as units under the federal Coastal Barrier Resources Act (Public Law 97-348) and for which a building permit or plat has been filed with the municipality, county, or the United States Army Corps of Engineers before the effective date of Senate Bill 14, Acts of the 78th Legislature, Regular Session, 2003, are [construction has commenced on or after July 1, 1991 shall not be considered] insurable property.

SECTION \_\_\_\_ .02. Section 5, Article 21.49, Insurance Code, is amended by adding Subsection (l) to read as follows:

(l) After January 1, 2004, for geographic areas specified by the commissioner, the commissioner by rule may supplement the building specifications in the plan of operation with the structural provisions of the International Residential Code for one- and two-family dwellings, as published by the International Code Council, or by an analogous entity recognized by the department. For those specified geographic areas, the commissioner by rule may adopt subsequent editions of that code and may adopt any supplements published by the International Code Council and amendments to that code.

SECTION \_\_\_\_\_.03. Section 6A, Article 21.49, Insurance Code, is amended by amending Subsections (a), (d), (h), (j), and (k) and adding Subsections (j-1) and (k-1) to read as follows:

(a) Except as otherwise provided by this Subsection, all structures that are constructed or repaired or to which additions are made on or after January 1, 1988, to be considered insurable property for windstorm and hail insurance from the Association, must be inspected or approved by the Board for compliance with ~~the building specifications in~~ the plan of operation. After January 1, 2004 ~~[2002]~~, for ~~[in]~~ geographic areas specified by the commissioner, the commissioner by rule shall adopt ~~[may supplement the building specifications in the plan of operation with the structural provisions of]~~ the 2003 International Residential Code for one- and two-family dwellings published by the International Code Council. For those geographic areas, the commissioner by rule may adopt a subsequent edition of that code and may adopt any supplements published by the International Code Council and amendments to the code. [Roofing materials satisfy the building specifications in the plan of operation if those materials pass the UL Standard 997 or a comparable test certified by the Board and are installed as required by the Board to promote the wind resistance of the materials.] A structure constructed, repaired, or to which additions were made before January 1, 1988, that is located in an area covered at the time by a building code recognized by the Association shall be considered an insurable property for windstorm and hail insurance from the Association without compliance with the inspection or approval requirements of this Section or the plan of operation. A structure constructed, repaired, or to which additions were made before January 1, 1988, that is located in an area not covered by a building code recognized by the Association shall be considered an insurable property for windstorm and hail insurance from the Association without compliance with the inspection or approval requirements of this Section or the plan of operation if that structure has been previously insured by a licensed insurance company authorized to do business in this State and the risk is in essentially the same condition as when previously insured, except for normal wear and tear, and without any structural change other than a change made according to code. Evidence of previous insurance includes a copy of a previous policy, copies of canceled checks or agent's records that show payments for previous policies, and a copy of the title to the structure or mortgage company records that show previous policies. After January 1, 2004 ~~[2002]~~, a person must submit a notice of a ~~[an application for]~~ windstorm inspection to the unit responsible for certification of windstorm inspections ~~[inspection]~~ at the department before beginning to construct, alter, remodel, enlarge, or repair a structure. ~~[Failure to submit a timely application may result in a certificate of compliance not being issued unless plans and~~

~~calculations, testing information, manufacturer's installation instructions, or any other documentation required by the commissioner is submitted to the unit responsible for windstorm inspection at the department as may be requested in order to fulfill the requirements of this section. The Board may appoint or employ qualified inspectors as defined in this Section to perform any inspections required by this Section.]~~

(d) A windstorm inspection may only be performed by a qualified inspector. For purposes of this article, a "qualified inspector" includes:

(1) a person determined by the Board to be qualified to perform building inspections because of training or experience;

(2) a licensed professional engineer meeting the requirements of the rules adopted by the commissioner for appointment to conduct windstorm inspections; and

(3) an inspector who is certified by the International Code Council, the Building Officials and Code Administrators International, Inc., the International Conference of Building Officials, or the Southern Building Code Congress International, Inc., who has certifications as a buildings inspector and coastal construction inspector, and who also complies with other requirements specified by rule by the commissioner. A qualified inspector must be approved and appointed or employed by the department [Board] to perform building inspections. The department [Board] may charge a reasonable fee [~~not to exceed \$200~~] for the filing of applications and determining the qualifications of persons for appointment as qualified inspectors.

(h) The department [Board] may charge a reasonable fee to cover the cost of making building requirements [specifications] and inspection standards available to the public.

(j) After notice and hearing, the department [Board] may cancel or revoke an appointment [~~or authorization~~] made [~~issued, or existing~~] under this Section if the holder [~~or possessor~~] of the appointment [~~or authorization~~] is found to be in violation of, or to have failed to comply with, specific provisions of this Section or any rule or regulation of the commissioner [Board] made under this Section. In lieu of cancellation or revocation, the commissioner [Board] may order one or more of the following sanctions, if the commissioner [it] determines from the facts that it would be fair, reasonable, or equitable:

(1) suspending the [~~authorization or~~] appointment for a specific period, not to exceed one year;

(2) an order directing the holder [~~or possessor~~] of the [~~authorization or~~] appointment to cease and desist from the specified activity determined to be in violation of specific provisions of this Section or rules and regulations of the commissioner [Board] made pursuant to this Section or from failing to comply with those provisions of this Section or the rules and regulations promulgated under this Section; or

(3) if the appointed person [~~authorized or appointed~~] is found by the commissioner [Board] to have knowingly, wilfully, fraudulently, or with gross negligence signed or caused to be prepared an inspection report that contains a false, fictitious, or fraudulent statement or entry, directing the appointed person [holder or possessor of the authorization or appointment] to remit within a specified time, not to exceed 60 days, a specified monetary forfeiture not to exceed \$5,000 for the violation or failure to comply.

(j-1) If an appointed person is an engineer licensed by the Texas Board of Professional Engineers who is found by the department to have knowingly, wilfully, fraudulently, or with gross negligence signed or caused to be prepared an inspection report that contains a false or fraudulent statement or entry, the commissioner may take action against the appointed person in the manner provided by Subsection (j) of this Section, but may not levy any monetary fine against an appointed person who is a licensed engineer.

(k) A monetary forfeiture paid as a result of an order issued under Subsection (j)(3) of this Section shall be deposited to the credit of the general revenue fund. If it is found after hearing that any appointed person ~~[holder or possessor]~~ has failed to comply with an order issued under Subsection (j) of this Section, the department ~~[Board]~~ shall, unless the its ~~[its]~~ order is lawfully stayed, cancel the ~~[authorization or]~~ appointment of the person ~~[holder or possessor]~~. The department ~~[Board]~~ may informally dispose of any matter under Subsection (j) of this Section by consent order or default.

(k-1) The commissioner shall notify the Texas Board of Professional Engineers of each order issued by the commissioner against an appointed person who is an engineer licensed by the Texas Board of Professional Engineers, including an order suspending, canceling, or revoking the appointment of that person.

SECTION \_\_\_\_ .04. Sections 6C(b), (f), (g), (h), (k), (l), and (m), Article 21.49, Insurance Code, are amended to read as follows:

(b) The Windstorm Building Code Advisory Committee on Specifications and Maintenance is established as an advisory committee to the commissioner to advise and make recommendations to the commissioner on building requirements ~~[specifications]~~ and maintenance in the plan of operation.

(f) The advisory committee shall analyze and make recommendations for changes regarding procedures described under Section 5(d) of this article that are ~~[building specifications]~~ adopted by the commissioner in the plan of operation. In making recommendations, the advisory committee shall ~~[consider technological developments in building products and windstorm research and shall]~~ seek to balance the concerns of all affected parties, including consumers, builders, and the Association.

(g) Each proposal for a change in an applicable procedure ~~[building specification]~~ must be submitted to the commissioner. Each proposal must be submitted separately in writing and must contain:

(1) the name, mailing address, and telephone number of the proponent, or, if the proponent is a group or organization, the name of the group or organization and the mailing address and telephone number of the group or organization;

(2) a citation of any applicable statute or rule ~~[the building code section regarding that specification, as published in the latest edition of that code];~~

(3) the text of the proposed change, with deletions from current ~~[code]~~ language struck through with a single line and new language underlined; and

(4) a statement of the purpose of the proposed change, with supporting written or printed information.

(h) The commissioner by rule shall adopt a form to be used by a person in presenting a proposal for a change in an applicable procedure [~~building specification~~] to the commissioner.

(k) At an advisory committee meeting, any interested person may present the person's views on a proposal for a change in an applicable procedure [~~building specification~~] that is included on the advisory committee's published agenda. The advisory committee shall consider each comment presented in its action on the disposition of each proposal.

(l) After consideration of a proposal for a change in an applicable procedure [~~building specification~~], the advisory committee by vote shall:

- (1) recommend adoption of the proposal as initially submitted;
- (2) recommend adoption of the proposal with modifications;
- (3) recommend rejection of the proposal; or
- (4) suspend consideration of the proposal and request additional evaluation and study of the proposal.

(m) The advisory committee shall submit its recommendation on each proposal to the commissioner. The commissioner shall notify the advisory committee of the acceptance or rejection of each recommendation not later than the 30th day after the date of receipt by the commissioner. Acceptance of a recommendation by the commissioner means that the commissioner will consider adoption of that recommendation at a rulemaking hearing. Before adopting a recommendation, the commissioner must determine that the proposal, if adopted, will not weaken the integrity or diminish the effectiveness of a procedure [~~building specification~~]. [~~The commissioner by rule may adopt a recommendation of the advisory committee by amending the plan of operation and, in amending the plan, may adopt a specification by reference.~~]

SECTION \_\_\_\_ .05. Article 21.49, Insurance Code, is amended by adding Section 6D to read as follows:

Sec. 6D. APPOINTMENT OF ENGINEERS; RULES. (a) The commissioner, on the request of an engineer licensed by the Texas Board of Professional Engineers, shall appoint the engineer under this article not later than the 10th day after the date of the engineer's delivery to the commissioner of information demonstrating that the engineer is qualified to perform windstorm inspections under this article.

(b) The commissioner shall adopt rules to determine the information the commissioner will consider in appointing engineers under Subsection (a) of this section.

SECTION \_\_\_\_ .06. Sections 6A(c) and (e), Article 21.49, Insurance Code, are repealed.

SECTION \_\_\_\_ .076. Article 21.49, Insurance Code, as amended by this article, applies only to a policy of windstorm or hail insurance that is delivered, issued for delivery, or renewed after January 1, 2004. A policy that is delivered, issued for delivery, or renewed on or before January 1, 2004, is governed by the law as it existed immediately before the effective date of this article, and that law is continued in effect for that purpose.

SECTION \_\_\_\_ .08. This article takes effect January 1, 2004.



**Floor Amendment No. 67**

Amend Floor Amendment No. 66 to **CSSB 14**, on page 2, line 4 of the amendment, by inserting "residential" between "all" and "structures".

**Floor Amendment No. 68**

Amend **CSSB 14** by inserting the following new ARTICLE, appropriately numbered, and renumber subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_\_. AVAILABILITY OF CERTAIN INFORMATION

SECTION \_\_\_\_\_.01. Subchapter A, Chapter 38, Insurance Code, is amended by adding Section 38.003 to read as follows:

Sec. 38.003. ACCESS TO LEGISLATURE AND OFFICE OF PUBLIC INSURANCE COUNSEL. (a) Notwithstanding any provision of this code, another insurance law of this state, or Chapter 552, Government Code, any document, record, or other information required to be filed with the department under this code or another insurance law of this state:

(1) is available on request to the Office of Public Insurance Counsel; and

(2) shall be disclosed as provided by Section 552.008, Government Code, relating to information for legislative purposes.

(b) Confidential information disclosed under this section remains confidential.

**Floor Amendment No. 69**

Amend **CSSB 14** by adding the following new sections to the bill, numbered appropriately, and renumbering existing sections of the bill appropriately:

Section \_\_\_\_\_. Article 5.07-1(b), Insurance Code, is amended to read as follows:

(b) In connection with the repair damage to a motor vehicle covered under an auto insurance policy, and insurer, an employee of insurer, an agent of an insurer, a solicitor of insurance for an insurer, an insurance adjuster, or an entity that employs an insurance adjuster may not:

(2) state or suggest, either orally or in writing, to a beneficiary that a specific repair person or facility or a repair person or facility identified on a preferred list compiled by an insurer ~~must be used by a beneficiary in order for the damage repair or parts replacement to be covered by the policy;~~ or

Section \_\_\_\_\_. Article 5.07-1(g), Insurance Code, is amended to read as follows:

(g) In the settlement of liability claims by a third-party against an insured for property damage claimed by the third-party, an insurer may not require the third-party claimant to have repairs made by a particular repair ~~persons person or facilities facility~~ or to use a particular brand, type, kind, age, vendor, supplier, or condition of parts or products. This subsection does not prohibit an insurer from referring a third-party claimant to particular repair persons or facilities or recommending the use of a particular brand, type, kind, age, vendor, supplier, or condition of parts or products if the third-party claimant solicits this information. A third-party claimant may bring an action to recover damages for a violation of this subsection. A third-party claimant who prevails in an action under this subsection is entitled to recover:

(1) the claimant's actual damages, not to exceed \$5,000;

(2) attorney's fees as described by Chapter 38, Civil Practice and Remedies Code; and

(3) court costs.

Section \_\_\_\_\_. This Act applies only to a violation of Article 5.07-1(b) or 5.07-1(g), Insurance Code, as amended by this Act, that occurs or after the effective date of this Act. A violation of Article 5.07-1(b) or 5.07-1(g), Insurance Code, that occurs 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 this purpose.

### Floor Amendment No. 70

Amend **CSSB 14** (House committee printing) by inserting the following appropriately numbered ARTICLE into the bill and renumbering existing ARTICLES accordingly:

#### ARTICLE \_\_\_\_\_. CANCELLATION OF CERTAIN INSURANCE POLICIES

Sec. \_\_\_\_\_.01. Section 4, Article 21.49-2B, Insurance Code is amended by amending Subsection (i) and adding Subsection (j) to read as follows:

(i) An insurer may cancel any insurance policy other than a personal automobile or homeowners insurance policy if the policy has been in effect less than 90 days. An insurer may cancel a personal automobile insurance policy if the policy [it] has been in effect less than 60 days. An insurer may cancel a homeowners insurance [any other] policy if the policy [it] has been in effect less than 60 [90] days if:

(1) the insurer identifies a condition that:

(A) creates an increase risk of hazard;

(B) was not disclosed in the application for insurance coverage; and

(C) is not the subject of a prior claim; or

(2) before the effective date of the policy, the insurer does not accept a copy of a required inspection report that:

(A) was completed by an inspector licensed by the Texas Real Estate Commission or who is otherwise authorized to perform inspections; and

(B) is dated not earlier than the 90th day before the effective date of the policy.

(j) For the purposes of Subsection (i), an inspection report is deemed accepted if an insurer does not reject the inspection report given to the insurer under Subsection (i)(2) before the 11th day after the date the inspection report is received by the insurer.

### Floor Amendment No. 72

Amend **CSSB 14** as follows:

(1) In SECTION 3.09 of the bill, in added Section 13, Article 5.13-2, Insurance Code (page 48, lines 18-20, House committee printing), strike Subsection (e) and substitute the following:

(e) For purposes of this section, "nonstandard rates" means rates that are 30 percent or more above the standard rate index as determined by the commissioner under this section.

(2) In SECTION 3.09 of the bill, in added Section 13, Article 5.13-2, Insurance Code (page 48, line 26, through page 49, line 8, House committee printing), strike Subsections (g) and (h) and substitute the following:

(g) A county mutual insurance company, including a county mutual insurance company described by Subsection (f) of this section, that increases its aggregate rates by 10 percent or more in a 12-month period must secure prior approval from the commissioner in the manner provided by Article 5.142 of this code as it existed on of September 1, 2003. The 10 percent threshold described by this subsection shall be calculated by and applied to aggregate business accepted from each managing general agent, as defined by Article 21.07-3 of this code.

(h) A county mutual insurance company is not subject to Article 5.142 of this code or the rate filing requirements under this article for a policy issued for the minimum liability limits in accordance with Subchapter D, Chapter 601, Transportation Code.

(i) A personal automobile policy may not be transferred between a county mutual insurance company and any of its affiliates without prior consent of the policyholder.

(j) The commissioner by rule may designate other types of insurers that historically and as of the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003, have served or are serving the high-risk, nonstandard market. An insurer designated by the commissioner as having served or serving the nonstandard market is governed by this section.

#### **Floor Amendment No. 73**

Amend **CSSB 14** as follows:

1. On page 48, line 19, delete "130 percent" and substitute "30 percent".

#### **Floor Amendment No. 74**

Amend **CSSB 14** as follows:

1. On page 49, line 1, delete the words "12-month period" and substitute "calendar year".

#### **Floor Amendment No. 75**

Amend **CSSB 14**, on page 49, by striking lines 3 through 8.

#### **Floor Amendment No. 77**

Amend **CSSB 14** in added Section 13, Article 5.13-2, Insurance Code (page 49, lines 3-8, House committee printing), by striking Subsection (h) and substituting the following:

(h) The commissioner by rule shall set standards to designate other types of insurers that historically and as of the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003, have served or are serving the high-risk, nonstandard market in this state and have surplus in an amount determined by the commissioner by rule as sufficient. Serving the market shall include providing reinsurance of high-risk, nonstandard business or writing directly high-risk, nonstandard business. An insurer so designated by the commissioner as having served or serving the nonstandard market is governed by this section.

#### **Floor Amendment No. 78**

Amend **CSSB 14** by inserting the following appropriately numbered ARTICLE and renumbering the subsequent ARTICLES accordingly:

## ARTICLE \_\_\_\_\_. PREMIUM DISCOUNTS

SECTION \_\_\_\_\_. Subchapter A, Chapter 5, Insurance Code, is amended by adding Article 5.03-6 to read as follows:

Art. 5.03-6. PREMIUM DISCOUNT FOR UNITED STATES ARMED FORCES PERSONNEL

Sec. 1. DEFINITIONS. In this article:

(1) "Applicant" means an individual who applies under this article for a discount in motor vehicle insurance premiums.

(2) "Insurer" means an insurance company, interinsurance exchange, mutual, capital stock company, fraternal benefit society, local mutual aid association, county mutual, reciprocal, association, Lloyd's plan insurer, or other entity writing motor vehicle insurance in this state. The term includes an affiliate, as defined by Section 823.003 of this code.

(3) "Motor vehicle" means any private passenger vehicle that:

(A) is registered in a state; and

(B) has a gross weight of 25,000 pounds or less.

Sec. 2. DISCOUNT AUTHORIZED; ELIGIBILITY CONDITIONS FOR DRIVERS. (a) An insurer who delivers or issues for delivery in this state a motor vehicle insurance policy, on receipt of written verification from the insured that the insured or a family member covered by the policy is eligible under Subsection (b) of this section, may grant a discount in the amount provided by Subsection (f) of this section in the premiums charged for the liability, medical payments, personal injury protection, and collision coverage only for the motor vehicle designated to be driven by the eligible individual.

(b) To be eligible for the discount authorized under Subsection (a) of this section, an applicant must:

(1) be licensed to drive in a state;

(2) be on active duty in the United States armed forces or be the spouse of an individual on active duty in the United States armed forces;

(3) have held a driver's license for at least three years on the date the application is filed;

(4) have not, during the three years preceding the date of the application, been convicted of violating a law or ordinance of a state or a political subdivision of a state relating to the operation of a moving motor vehicle; and

(5) have not, during the three years preceding the date of the application, been found at fault in a motor vehicle accident.

(c) An applicant is not eligible to receive a discount under this article if the applicant has been convicted of an offense relating to the operation of a motor vehicle under:

(1) Chapter 49, Penal Code;

(2) Article 67011-1, Revised Statutes, as that statute existed before repeal by Chapter 900, Acts of the 73rd Legislature, Regular Session, 1993, or Section 19.05, Penal Code, as that statute existed before amendment by Chapter 900, Acts of the 73rd Legislature, Regular Session, 1993; or

(3) another state's statute similar to a statute described by Subdivision (1) or (2) of this subsection.

(d) For purposes of Subsections (b) and (c) of this section, an applicant is considered to have been convicted in a case if:

(1) a sentence is imposed; or

(2) the applicant receives community supervision or analogous treatment under the law of another state.

(e) The commissioner by rule may establish additional requirements for receipt of a discount under this article.

(f) The commissioner by rule shall set the amount of the discount applicable under this article and may adopt other rules necessary for the implementation of this article.

Sec. 3. INELIGIBILITY; REVOCATION OF DISCOUNT. (a) An individual may not continue to receive a discount under this article after the first date on which the individual fails to satisfy the requirements of Section 2 of this article unless the individual reestablishes eligibility under this article.

(b) An insurer shall revoke a discount under this article if an applicant for the discount knowingly provides false information in or with the application.

SECTION \_\_\_\_\_. Article 5.03-6, Insurance Code, as added by this article, applies only to a motor vehicle insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2004. A policy that is delivered, issued for delivery, or renewed before January 1, 2004, is governed by the law as it existed immediately before the effective date of this article, and that law is continued in effect for that purpose.

### **Floor Amendment No. 79**

Amend **CSSB 14** (House committee printing) as follows:

(1) Insert the following new ARTICLE 4A to read as follows:

#### ARTICLE 4A. EXEMPTIONS FROM CERTAIN RATE REQUIREMENTS

SECTION 4A.01. Subchapter B, Chapter 5, Insurance Code, is amended by adding Article 5.13-2C to read as follows:

#### Art. 5.13-2C. EXEMPTIONS FROM RATE FILING AND APPROVAL REQUIREMENTS FOR CERTAIN INSURERS

Sec. 1. DEFINITIONS. In this article:

(1) "Credit score" has the meaning assigned by Article 21.49-2U of this code.

(2) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write residential property insurance in this state. The term includes an affiliate, as described by this code, if that affiliate is authorized to write residential property insurance.

(3) "Residential property insurance" means insurance coverage against loss to real or tangible personal property at a fixed location that is provided through a homeowners policy, including a tenants policy, a condominium owners policy, or a residential fire and allied lines policy.

Sec. 2. APPLICABILITY. (a) Except as provided by Subsection (b) of this section, this article applies only to an insurer that, during the calendar year preceding the date filing is otherwise required under Article 5.13-2 or Article 5.142 of this code,

issued residential property insurance policies in this state that accounted for less than two percent of the total amount of premiums collected by insurers for residential property insurance policies issued in this state, more than 50 percent of which cover property:

(1) valued at less than \$100,000; and

(2) located in an area designated by the commissioner as underserved for residential property insurance under Article 5.35-3 of this code.

(b) If an insurer described by Subsection (a) of this section is a member of an affiliated insurance group, this article applies to the insurer only if the total aggregate premium collected by the group accounts for less than two percent of the total amount of premiums collected by insurers for residential property insurance policies issued in this state.

Sec. 3. EXEMPTION. (a) Except as provided by Subsection (b) of this section, an insurer described by Section 2 of this article is exempt from the rate filing and approval requirements of Article 5.13-2 of this code, as effective on and after September 1, 2004.

(b) An insurer described by Section 2 of this article that proposes to increase the premium rates charged policyholders for a residential property insurance product by 10 percent or more than the amount the insurer charged policyholders for the same or an equivalent residential property insurance product during the preceding calendar year must file the insurer's proposed rates in accordance with Article 5.142 or Article 5.13-2 of this code, as applicable, and obtain approval of the proposed rates as provided by the applicable article.

(c) Articles 5.142 and 5.143 of this code do not apply to an insurer described by Section 2 of this article.

(2) Strike added Subchapter H, Chapter 911, Insurance Code.

### **Floor Amendment No. 80**

Amend Floor Amendment No. 79 to **CSSB 14** by striking Section 1(1) of added Article 5.13-2C, Insurance Code (page 1, lines 9-10, of the amendment), and renumbering the subdivisions of that section appropriately.

### **Floor Amendment No. 83**

Amend **CSSB 14**, in ARTICLE 4 of the bill, by adding the following new SECTION, appropriately numbered, to read as follows:

SECTION 4.\_\_\_\_. Article 5.13-2, Insurance Code, is amended by adding Section 3A to read as follows:

Sec. 3A. RATE FACTORS. (a) In deciding whether a rate filing made by an insurer complies with this article, the commissioner shall consider whether:

(1) the insurer's rate complies with the rating criteria adopted under this article;

(2) the insurer's underwriting guidelines are fair and not discriminatory;

(3) the insurer has applied credit scoring in accordance with Article 21.49-2U of this code; and

(4) any applicable management fees charged by the insurer comply with law and are not unreasonable or excessive under accepted regulatory standards.

(b) The insurer must itemize any applicable management fees charged by the insurer, including an analysis of each fee that states each component of the fee, and an itemization of profit-load.

#### **Floor Amendment No. 85**

Amend **CSSB 14** (House committee printing) as follows:

(1) In ARTICLE 4 of the bill, insert the following appropriately numbered SECTION and renumber existing SECTIONS accordingly:

SECTION 4.\_\_\_\_. Section 8, Article 5.13-2, Insurance Code, is amended by adding Subsection (g) to read as follows:

(g) The commissioner shall promulgate an optional residential property insurance policy endorsement that provides coverage for the repair or replacement of any part of a building necessary to repair or replace a natural gas system or appliance using natural gas, including repair of the natural gas system supplying the appliance with natural gas.

(2) In ARTICLE 4 of the bill, strike SECTION 4.06 of the bill and substitute the following:

SECTION 4.06. (a) Except as provided by Subsection (b) of this section, this article takes effect September 1, 2004.

(b) Section 8(g), Article 5.13-2, Insurance Code, as added by this act, takes effect September 1, 2003.

#### **Floor Amendment No. 89**

Amend **CSSB 14** in added Subchapter U, Chapter 5, Insurance Code by striking added Article 5.171 and substituting the following:

##### SUBCHAPTER U. RATING TERRITORIES FOR CERTAIN LINES

Art. 5.171. RATING TERRITORIES. Notwithstanding any other provision of this code, an insurer may not use a rating territory that is smaller than a county unless the county is subdivided and the rate for any sub-territory within that county is not greater than 15 percent higher than the rate used in any other sub-territory in the county, except that the commissioner may, by rule, allow a greater rate difference for residential property insurance or personal automobile insurance.

#### **Floor Amendment No. 90**

Amend **CSSB 14** as follows:

Amend subsection (a) of Insurance Code article 5.73, Sec. 4A. to read:

(a) An advisory organization may file prospective loss costs, supplementary rating information, and policy forms with the commissioner under article 5.13-2 of this code and under other sections of this chapter governing the filing of rates and policy forms by insurers. An insurer that subscribes to an advisory organization may use this information and may incorporate the information into the insurer's filings. A filing made by an advisory organization under this section is subject to the provisions of this code or the other insurance laws of this state governing rate filings. Nothing herein shall permit the advisory organization to publish rates.

**Floor Amendment No. 92**

Amend **CSSB 14** as follows:

(1) Strike SECTIONS 6.01-6.03 of the bill (page 56, line 8, through page 59, line 2), and substitute the following SECTIONS:

SECTION 6.01. (a) Effective June 1, 2003, Section 827.001, Insurance Code, is amended to read as follows:

Sec. 827.001. ~~DEFINITIONS~~ [DEFINITION]. In this chapter:

(1) "Insurer" means an insurance company or other legal entity authorized to engage in the business of insurance in this state, including a reciprocal or interinsurance exchange, a Lloyd's plan, a farm mutual insurance company, and a county mutual insurance company. The term includes an affiliate. The term does not include an eligible surplus lines insurer regulated under Chapter 981.

(2) "Rating[~~ing~~] territory" means a rating territory established by the department.

(b) Until June 1, 2003, Subsection (a), Article 21.49-2C, Insurance Code, is amended by adding Subdivision (4) to read as follows:

(4) "Insurer" means an insurance company or other legal entity authorized to write insurance in this state, including a county mutual insurance company, a reciprocal or interinsurance exchange, a Lloyd's plan, and a farm mutual insurance company. This subdivision expires June 1, 2003.

SECTION 6.02. (a) Effective June 1, 2003, Section 827.002, Insurance Code, is amended to read as follows:

Sec. 827.002. EXEMPTION. This chapter does not apply to a transfer of business from an insurer to a company that:

(1) is within the same insurance group as [~~under common ownership with~~] the insurer; [~~and~~]

(2) is authorized to engage in the business of insurance in this state; and

(3) is not a reciprocal or interinsurance exchange, a Lloyd's plan, a county mutual insurance company, or a farm mutual insurance company.

(b) Until June 1, 2003, Subsection (b), Article 21.49-2C, Insurance Code, is amended to read as follows:

(b) This article does not apply to the transfer of the business from an insurer to a company that is within the same insurance group as the insurer and is [~~under common ownership~~] admitted to do business in this state. This subsection expires June 1, 2003.

SECTION 6.03. (a) Effective June 1, 2003, Section 827.003, Insurance Code, is amended to read as follows:

Sec. 827.003. WITHDRAWAL PLAN REQUIRED. An [~~authorized~~] insurer shall file with the commissioner a plan for orderly withdrawal if the insurer proposes to:

(1) [~~withdraw from writing a line of insurance in this state or~~] reduce the insurer's total annual premium volume by 50 [~~75~~] percent or more; [~~or~~]

(2) reduce the insurer's annual premium by 75 percent or more in a line of insurance in this state; or

(3) reduce in this state, or in any applicable [~~in a~~] rating territory, the insurer's total annual premium volume in a [~~personal~~] line of personal automobile [~~motor vehicle comprehensive~~] or residential property insurance by 50 percent or more.



(b) Until June 1, 2003, Subsection (a)(1), Article 21.49-2C, Insurance Code, is amended to read as follows:

(1) This subdivision expires June 1, 2003. An ~~authorized~~ insurer shall file with the commissioner a plan for orderly withdrawal if the insurer proposes ~~to withdraw from writing a line of insurance in this state or~~ to reduce its total annual premium volume by 50 [75] percent or more, proposes to reduce the insurer's annual premium by 75 percent or more in a line of insurance in this state, or proposes, in a personal line of motor vehicle insurance [comprehensive] or residential property insurance, to reduce its total annual premium volume in a rating territory by 50 percent or more. The insurer's plan shall be constructed to protect the interests of the people of this state and shall indicate the date it intends to begin and complete its withdrawal plan and must contain provisions for:

- (A) meeting the insurer's contractual obligations;
- (B) providing service to its Texas policyholders and claimants; and
- (C) meeting any applicable statutory obligations, such as the payment of assessments to the guaranty fund and participation in any assigned risk plans or joint underwriting arrangements.

SECTION 6.04. (a) Effective June 1, 2003, Section 827.005, Insurance Code, is amended to read as follows:

Sec. 827.005. APPROVAL OF WITHDRAWAL PLAN. (a) Except as provided by Subsection (b), the [The] commissioner shall approve a withdrawal plan that adequately provides for meeting the requirements prescribed by Section 827.004(3).

(b) The commissioner may modify, restrict, or limit a withdrawal plan under this section as necessary if the commissioner finds that a line of insurance subject to the withdrawal plan is not offered in a quantity or manner to adequately cover the risks in this state or to adequately protect the residents of this state and policyholders in this state. The commissioner may by order set the date on which the insurer's withdrawal begins.

(c) A withdrawal plan is deemed approved if the commissioner:

- (1) does not hold a hearing on the plan before the 61st [31st] day after the date the plan is filed with the commissioner; or
- (2) does not deny approval before the 61st [31st] day after the date a hearing on the plan is held.

(b) Until June 1, 2003, Subsections (e) and (f), Article 21.49-2C, Insurance Code, are amended to read as follows:

(e) Except as provided by Subsection (f), the [The] commissioner shall approve the plan if it adequately provides for:

- (1) meeting the insurer's contractual obligations;
- (2) providing service to its Texas policyholders and claimants; and
- (3) meeting any applicable statutory obligations, such as the payment of assessments to the guaranty fund and participation in any assigned risk plans or joint underwriting arrangements.

(f) The commissioner may modify, restrict, or limit a withdrawal plan under this section as necessary if the commissioner finds that a line of insurance subject to the withdrawal plan is not offered in a quantity or manner to adequately cover the risks in this state or to adequately protect the residents of this state and policyholders in this

state. The commissioner may by order set the date on which the insurer's withdrawal begins. The withdrawal plan shall be deemed approved if the commissioner has not held a hearing within 60 [30] days after the plan is filed with the commissioner or has not denied approval within 60 [30] days after the hearing. An insurer that withdraws from writing insurance in this state or that reduces its total annual premium volume by 75 percent or more in any year without receiving the commissioner's approval is subject to the civil penalties under Article 1.10 of this code.

SECTION 6.05. (a) Effective June 1, 2003, Section 827.008, Insurance Code, is amended to read as follows:

Sec. 827.008. RESTRICTION PLAN. (a) Before an insurer, in response to a catastrophic natural event that occurred during the preceding six months, may restrict writing new business in a rating territory in a [personal] line of personal automobile [comprehensive motor vehicle] or residential property insurance, the insurer must file a proposed restriction plan with the commissioner for the commissioner's review and approval [comment].

(b) The commissioner may modify, restrict, or limit a restriction plan under this section as necessary if the commissioner finds that a line of insurance subject to the restriction plan is not offered in this state in a quantity or manner to adequately cover the risks in this state or to adequately protect the residents of this state and policyholders in this state in light of the impact of the catastrophic natural event. The commissioner may by order set the date on which the insurer's restriction begins. [The commissioner's approval of a restriction plan filed under Subsection (a) is not required. An insurer that files a restriction plan may institute the plan on or after the 15th day after the date the plan is filed.]

(c) A [Notwithstanding Subsection (b), a] withdrawal plan must be filed and approved under Sections 827.003 and 827.004 if an insurer's decision not to accept new business in a [personal] line of personal automobile [comprehensive motor vehicle] or residential property insurance results in a reduction of the insurer's total annual premium volume by 50 percent or more.

(b) Until June 1, 2003, Subsection (a)(2), Article 21.49-2C, Insurance Code, is amended to read as follows:

(2) If within six months after a catastrophic event of natural origin an insurer, in response to such catastrophic event, wishes to restrict its writing of new business in a personal automobile [line of comprehensive motor vehicle] or residential property insurance in a rating territory, it shall prepare and file a plan as to such proposed plan of restriction with the commissioner for the commissioner's review and approval [comment]. The commissioner may modify, restrict, or limit a restriction plan under this section as necessary if the commissioner finds that a line of insurance subject to the restriction plan is not offered in this state in a quantity or manner to adequately cover the risks in this state or to adequately protect the residents of this state and policyholders in this state in light of the impact of the catastrophic natural event. The commissioner may by order set the date on which the insurer's restriction begins. In [Approval of such plan is not required and the insurer may institute such plan 15 days after filing. However, in] the event of a conflict between Subsections (a)(1) and (a)(2), where not accepting new business may result in a withdrawal as defined in Subsection (a)(1), Subsection (a)(1) controls.

(2) Renumber SECTION 6.04 of the bill appropriately.

(3) Immediately following amended Article 21.49-2C(g), Insurance Code (page 60, between lines 9 and 10), insert the following new SECTION, appropriately numbered:

SECTION 6.0 \_\_\_\_\_. This article applies only to a reduction of a line of insurance or a withdrawal of a line of insurance by an insurer on or after the effective date of this article. A reduction of a line of insurance or a withdrawal of a line of insurance by an insurer before the effective date of this article is governed by the law as it existed immediately before the effective date of this article, and that law is continued in effect for that purpose.

#### **Floor Amendment No. 95**

Amend **CSSB 14** as follows:

Article 8. REVENUE BOND PROGRAM

Amend SECTION 8.05, Sec. 15. RETENTION OF PROFITS as follows:

"Sec. 15. RETENTION OF PROFITS. The association shall retain any profits of the association to be used for the purposes of the association. The profits of the association may not be distributed to insurers and shall be used to offset future assessments."

#### **Floor Amendment No. 98**

Amend **CSSB 14** as follows:

(1) In SECTION 1.01 of the bill, in added Section 2(a)(3), Article 5.142, Insurance Code (page 3, lines 4-8), strike Paragraphs (F) and (G) and substitute the following:

(F) except as authorized by rule by the commissioner, fees and assessments paid to advisory organizations;

(G) any amount determined by the commissioner to be excess premiums charged by the insurer; and

(H) any unreasonably incurred expenses, as determined by the commissioner after notice and hearing.

(2) In SECTION 4.04 of the bill, in amended Section 3(a)(1), Article 5.13-2, Insurance Code, insert the following new paragraph, appropriately lettered:

( ) any amount determined by the commissioner to be excess premiums charged by the insurer.

#### **Floor Amendment No. 100**

Amend **CSSB 14** (House committee printing) by adding the following new ARTICLE to the bill and renumbering existing ARTICLES accordingly:

ARTICLE \_\_\_\_\_. CANCELLATION OF CERTAIN  
INSURANCE POLICIES

SECTION \_\_\_\_\_.01. The heading to Article 21.49-2A, Insurance Code, is amended to read as follows:

Art. 21.49-2A. CANCELLATION AND NONRENEWAL OF CERTAIN LIABILITY AND COMMERCIAL PROPERTY INSURANCE COVERAGE.

SECTION \_\_\_\_\_.02. Subsections (a), Article 21.49-2A, Insurance Code, is amended by amending Subdivision (2) and adding Subdivision (3) to read as follows:

(2) "Insurer" means each insurance company or other entity admitted to do business and authorized to write liability or commercial property insurance in this state, including county mutual insurance companies, Lloyd's plan companies, and reciprocal or interinsurance exchanges but excluding farm mutual insurance companies and county mutual fire insurance companies writing exclusively industrial fire insurance as defined by Article 17.02 of this code.

(3) "Commercial property insurance" means insurance covering direct or indirect loss resulting from property damage to commercial property.

SECTION \_\_\_\_ .03. Subsections (b) and (d), Article 21.49-2A, Insurance Code, are amended to read as follows:

(b) Except as provided by Section (c) of this article, an insurer may not cancel:

(1) a policy of liability or commercial property insurance that is a renewal or continuation policy; or

(2) a policy of liability or commercial property insurance that is in its initial policy period after the 60th day following the date on which the policy was issued.

(d) An insurer must deliver or mail to the first-named insured under a liability or commercial property insurance policy at the address shown on the policy written notice of cancellation of the policy not less than the 10th day before the date on which the cancellation takes effect.

SECTION \_\_\_\_ .04. Section 2, Article 21.49-2B, Insurance Code, is amended to read as follows:

Sec. 2. APPLICATION. This article applies only to:

(1) a personal automobile insurance policy, other than a policy written through the Texas Automobile Insurance Plan;

(2) a homeowners or farm or ranch owner's policy; and

(3) a standard fire policy insuring a one-family dwelling, a duplex, or the contents of a one-family dwelling, a duplex, or an apartment[~~; and~~

~~(4) a policy providing property and casualty coverage to a governmental unit, other than a fidelity, surety, or guaranty bond].~~

### **Floor Amendment No. 101**

Amend **CSSB 14** by adding the following new SECTIONS to the bill, numbered appropriately, and renumbering the existing SECTIONS of the bill appropriately:

SECTION \_\_\_\_ . Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.79H to read as follows:

Art. 21.79H. RECOVERY OF CERTAIN COSTS FROM THIRD PARTY. (a) This article applies to any insurer who delivers, issues for delivery, or renews a private passenger automobile policy of insurance in this state, including an exchange operating under Chapter 942, or a mutual, reciprocal, association, Lloyd's plan, or other insurer.

(b) In this article, "brings an action" has the meaning described by Article 21.79G(e) of this code.

(c) An insurer that brings an action against a responsible third party or that party's insurer relating to a loss covered under a private passenger automobile insurance policy is entitled to recover, in addition to payments made by the insurer or insured, the costs of bringing the action, including reasonable attorney's fees and court costs.

SECTION \_\_\_\_\_. Article 5.06-3, Insurance Code, is amended by amending Subsection (c) and adding Subsection (i) to read as follows:

(c) The benefits required by this Act shall be payable without regard to the fault or non-fault of the named insured or the recipient in causing or contributing to the accident, and without regard to any collateral source of medical, hospital, or wage continuation benefits. Except as provided by Subsection (i) of this article, an [An] insurer paying benefits pursuant to this Act shall have no right of subrogation and no claim against any other person or insurer to recover any such benefits by reason of the alleged fault of such other person in causing or contributing to the accident.

(i) An insurer paying benefits pursuant to this Act, including a county mutual insurance company, shall have a right of subrogation and a claim against a person causing or contributing to the accident if, on the date of loss, financial responsibility as required by Chapter 601, Transportation Code, has not been established for a motor vehicle involved in the accident and operated by that person or the motor vehicle operated by that person was insured by an insurer not authorized to engage in business in this state.

SECTION \_\_\_\_\_. Article 21.79H, Insurance Code, as added by this Act, applies only to an action commenced on or after January 1, 2004. An action commenced before that date 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.

SECTION \_\_\_\_\_. The change in law made by this Act to Article 5.06-3, Insurance Code, applies only to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2004. A policy delivered, issued for delivery, or renewed before January 1, 2004, 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.

### **Floor Amendment No. 105**

Amend **CSSB 14**, committee printing, as follows:

On page 60, strike lines 11-27 and substitute the following:

SECTION 7.01. Section 5, Article 21.21-6, Insurance Code, as added by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 5. SANCTIONS. (a) Any legal entity engaged in the business of insurance in this state found to be in violation of or failing to comply with this article is subject to the sanctions authorized by Chapter 82 ~~[in Article 1.10]~~ of this code ~~or[, including]~~ administrative penalties authorized by Chapter 84 ~~[under Article 1.10E]~~ of this code. The commissioner may also utilize the cease and desist procedures authorized by Chapter 83 ~~[Article 1.10A]~~ of this code.

(b) It is not a defense to an action of the commissioner under Subsection (a) of this section that the contract giving rise to the alleged violation was entered into before the effective date of this article.

SECTION 7.02. Subchapter B, Chapter 21, Insurance Code, is amended by adding Article 21.21-6A to read as follows:

Art. 21.21-6A. CRIMINAL PENALTY. (a) In this article, "person" means a legal entity engaged in the business of life insurance described in Subdivisions (a), (b), (e), (f), and (j), Section 2, Article 21.21-6 of this code, as added by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995, or an officer or director of one of those entities.

(b) A person commits an offense if the person with reckless culpability:

(1) offers insurance coverage at a premium based on a rate that is, because of race, color, religion, ethnicity, or national origin, different from another premium rate offered or used by the person for the same coverage, other than for classifications applicable alike to persons of every race, color, religion, ethnicity, or national origin; or

(2) collects an insurance premium based on a rate that is, because of race, color, religion, ethnicity, or national origin, different from another premium rate offered or used by the person for the same coverage, other than for classifications applicable alike to persons of every race, color, religion, ethnicity, or national origin.

(c) An offense under this article is a state jail felony.

SECTION 7.03. Subsection (c), Section 3, Article 21.21-8, Insurance Code, is amended to read as follows:

(c) All actions under this article must be commenced on or before the second anniversary of [within 12 months after] the date on which the plaintiff was denied insurance or the unfair act occurred or the date the plaintiff, in the exercise of reasonable diligence, should have discovered the occurrence of the unfair act.

SECTION 7.04. Section 1, Article 21.74, Insurance Code, is amended by amending Subdivisions (1) and (2) and adding Subdivision (4) to read as follows:

(1) "Holocaust victim" means a person who was killed or injured, or who lost real or personal property or financial assets, as the result of discriminatory laws, policies, or actions directed against any discrete group of which the person was a member, during the period of 1920 to 1945, inclusive, in Germany, areas occupied by Germany, ~~or~~ countries allied with Germany, or countries that were sympathizers with Germany.

(2) "Insurer" means an insurance company or other entity engaged in the business of insurance or reinsurance in this state. The term includes:

(A) a capital stock company, a mutual company, or a Lloyd's plan; and

(B) any parent, subsidiary, reinsurer, successor in interest, managing general agent, or affiliated company, at least 50 percent of the stock of which is in common ownership with an insurer engaged in the business of insurance in this state.

(4) "Proceeds" means the face value or other payout value of insurance policies and annuities plus reasonable interest to date of payment without diminution for wartime or immediate postwar currency devaluation.

SECTION 7.05. Article 21.74, Insurance Code, is amended by adding Sections 2A and 2B to read as follows:

Sec. 2A. FILINGS AND CERTIFICATES OF INSURANCE. (a) This section applies to each insurer engaging in business in the state that, directly or through a related company, sold to persons in Europe insurance policies described by Section 1

of this article or dowry or educational insurance policies that were in effect during the period of 1920 to 1945, whether the sale occurred before or after the insurer and the related company became related.

(b) Each insurer shall file or cause to be filed with the commissioner the following information:

(1) the number of insurance policies described by Subsection (a) of this section sold by the insurer or a related company;

(2) the holder, beneficiary, and current status of the policies; and

(3) the city of origin, domicile, or address for each policyholder listed in the policies.

(c) Each insurer shall certify:

(1) that the proceeds of the policies described by Subsection (a) of this section have been paid to the designated beneficiaries or their heirs in circumstances in which that person or those persons, after diligent search, could be located and identified;

(2) that the proceeds of the policies, in circumstances in which the beneficiaries or heirs could not, after diligent search, be located or identified, have been distributed to Holocaust survivors or to qualified charitable nonprofit organizations for the purpose of assisting Holocaust survivors;

(3) that a court of law has certified in a legal proceeding resolving the rights of unpaid policyholders and their heirs and beneficiaries a plan for the distribution of the proceeds; or

(4) that the proceeds have not been distributed and the amount of those proceeds.

(d) The commissioner by rule shall require that insurers update the information submitted to the commissioner under this section at reasonable intervals.

Sec. 2B. ESTABLISHMENT AND MAINTENANCE OF REGISTRY; PUBLIC ACCESS. (a) The commissioner shall establish and maintain within the department a central registry containing records and information relating to insurance policies described by Section 2A(a) of this article of Holocaust victims, living and deceased. The registry shall be known as the Holocaust Era Insurance Registry.

(b) The commissioner by rule shall establish appropriate mechanisms to ensure public access to the registry.

(c) Information contained in the registry:

(1) is public information;

(2) is not subject to any exceptions to disclosure under Chapter 552, Government Code; and

(3) cannot be withheld from disclosure under any other law.

SECTION 7.06. (a) Article 21.21-6A, Insurance Code, as added by this Act, 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 immediately before the effective date of this Act, and that law is continued in effect for that purpose. For the purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) Subsection (c), Section 3, Article 21.21-8, Insurance Code, as amended by this Act, applies to a cause of action for which the limitations period established under that subsection before its amendment by this Act has not expired on the effective date of this Act.

SECTION 7.07. Not later than the 180th day after the effective date of this Act, an insurer subject to Article 21.74, Insurance Code, as amended by this Act, shall file the information and certification required by Section 2A of that article.

### Floor Amendment No. 106

Amend **CSSB 14**, committee printing, as follows:

On page 60, strike lines 11-27 and substitute the following:

SECTION 7.01. Subchapter B, Chapter 21, Insurance Code, is amended by adding Article 21.21-6A to read as follows:

Art. 21.21-6A. CRIMINAL PENALTY. (a) In this article, "person" means a legal entity engaged in the business of life insurance described in Subdivisions (a), (b), (e), (f), and (j), Section 2, Article 21.21-6 of this code, as added by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995, or an officer or director of one of those entities.

(b) A person commits an offense if the person with reckless culpability:

(1) offers insurance coverage at a premium based on a rate that is, because of race, color, religion, ethnicity, or national origin, different from another premium rate offered or used by the person for the same coverage, other than for classifications applicable alike to persons of every race, color, religion, ethnicity, or national origin;  
or

(2) collects an insurance premium based on a rate that is, because of race, color, religion, ethnicity, or national origin, different from another premium rate offered or used by the person for the same coverage, other than for classifications applicable alike to persons of every race, color, religion, ethnicity, or national origin.

(c) An offense under this article is a state jail felony.

SECTION 7.02. Article 21.21-6A, Insurance Code, as added by this Act, 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 immediately before the effective date of this Act, and that law is continued in effect for that purpose. For the purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

### Floor Amendment No. 2 on Third Reading

Amend **CSSB 14** on third reading, in ARTICLE 4 of the bill, in added Section 5A, Article 5.13-2, Insurance Code, as added by Floor Amendment No. 1 by Smithee, following added Subsection (m), by inserting the following new subsections:

(n) An insurer whose rates were not regulated by the department before the effective date of Senate Bill No. 14, Acts of the 78th Legislature, Regular Session, 2003, may renew business in an affiliate as necessary to comply with this article. Business renewed in an affiliate is not considered nonrenewed business of the insurer from which the business is transferred.



(o) A motor vehicle insurance rating manual, including a risk or rate classification contained in the rating manual, used by a county mutual insurance company whose rates were not regulated by the department before the effective date of Senate Bill No. 14, Acts of the 78th Legislature, Regular Session, 2003, is presumed valid and is deemed approved by the commissioner unless a classification contained in the manual is expressly prohibited by this article or another provision of this code. This subsection applies only to conduct that occurs on or after the effective date of Senate Bill No. 14, Acts of the 78th Legislature, Regular Session, 2003. Conduct occurring before the effective date of Senate Bill No. 14, Acts of the 78th Legislature, Regular Session, 2003, is covered by the law in effect at the time that the conduct occurred. This subsection expires June 1, 2004.

(p) A county mutual insurance company shall file with the department a motor vehicle rating manual, including a risk or rate classification contained in the rating manual, not later than the 30th day after the effective date of Senate Bill No. 14, Acts of the 78th Legislature, Regular Session, 2003.

#### **Floor Amendment No. 3 on Third Reading**

Amend Floor Amendment No. 30 to **CSSB 14**, on third reading, on page 1, line 4 of the amendment, by striking "SECTION 3.07" and substituting "SECTION 2.01".

#### **Floor Amendment No. 6 on Third Reading**

Amend **CSSB 14** on third reading in ARTICLE 2 of the bill by adding the following appropriately numbered SECTION and renumbering the existing SECTIONS:

SECTION 4. Article 21.49-U, Insurance Code, as added by this Act, applies to an insurance policy delivered, issued for delivery, or renewed on or after February 1, 2004. A policy delivered, issued for delivery, or renewed before February 1, 2004, 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.

#### **Floor Amendment No. 7 on Third Reading**

Amend Floor Amendment No. 6 on Third Reading to **CSSB 14**, on third reading, by amending added Article 21.49-2W, Insurance Code, by inserting the following appropriately numbered Section and renumbering the subsequent Sections of the article appropriately:

Sec. . CONSUMER REPORTING AGENCIES. An insurer may not accept a credit score from a consumer reporting agency other than a consumer reporting agency that is regulated by the state banking department in accordance with rules adopted by the state finance commission. This section expires February 1, 2004.

The amendments were read.

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

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 14** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Jackson, Chair; Armbrister, Van de Putte, Fraser, and Averitt.

### **NOTICE GIVEN FOR LOCAL AND UNCONTESTED CALENDAR**

Senator Harris announced that a Local and Uncontested Calendar had been furnished to each Member of the Senate. He then gave notice that the Local and Uncontested Calendar Session would be held at 7:30 a.m. tomorrow and that all bills and resolutions would be considered on second and third reading in the order in which they were listed.

### **MOTION TO ADJOURN**

On motion of Senator Whitmire and by unanimous consent, the Senate at 10:29 p.m. agreed to adjourn, in memory of Charles P. Schulze, Jr., of Irving, upon conclusion of the Local and Uncontested Calendar Session, until 11:00 a.m. tomorrow.

### **RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

#### **Memorial Resolutions**

**SR 978** by Bivins, In memory of Christopher Ryan Briones of Amarillo.

**HCR 251** (Bivins), In memory of U.S. Air Force Captian Eric Bruce Das of Amarillo.

#### **Congratulatory Resolutions**

**SR 974** by Gallegos, Congratulating Robert E. Landry on his 80th birthday.

**SR 977** by Lucio, Commending Raquel Beatriz Ybarra for her contributions to the Brownsville Independent School District.

**SR 979** by Zaffirini, Congratulating Dora Esther and Cayetano Tijerina, Jr., of Laredo on their 65th wedding anniversary.

**SR 980** by Van de Putte, Commending employers of Texas for their support of Texans who are performing their duty to this country.

**SR 981** by Armbrister, Congratulating Luke Beckett Marchant of Dallas on his graduation from Southern Nazarene University.

**SR 984** by West, Commending Ronnie D. Shade for his service to his community.

**SR 985** by Hinojosa, Commending Joe Ochoa of Edinburg for his service to his community.

**SR 986** by Gallegos, Honoring Johnny N. Mata of Houston for his service on behalf of the League of United Latin American Citizens.

**SR 987** by Nelson, Commending the Texas Council of Child Welfare Boards for its work on behalf of children.

### RECESS

On motion of Senator Whitmire, the Senate at 10:29 p.m. recessed until 7:30 a.m. tomorrow for the Local and Uncontested Calendar Session.

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## APPENDIX

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### COMMITTEE REPORTS

The following committee reports were received by the Secretary of the Senate in the order listed:

May 27, 2003

NATURAL RESOURCES — **HCR 206**

ADMINISTRATION — **HB 530**

### SENT TO GOVERNOR

May 27, 2003

**SB 196, SB 273, SB 370, SB 407, SB 501, SB 514, SB 521, SB 566, SB 608, SB 691, SB 745, SB 774, SB 854, SB 917, SB 919, SB 1070, SB 1072, SB 1136, SB 1147, SB 1251, SB 1317, SB 1429, SB 1445, SB 1457, SB 1526, SB 1527, SB 1572, SB 1606, SB 1647, SB 1663, SB 1669, SB 1694, SB 1884, SB 1892, SCR 21**

**In Memory**  
**of**  
**Charles P. Schulze, Jr.**  
**Senate Resolution 953**

WHEREAS, The people of Irving have lost a beloved friend, neighbor, and community leader with the passing of Charles Schulze, Jr., on April 21, 2003, at the age of 90; and

WHEREAS, The Schulze family co-founded Irving 100 years ago, and Mr. Schulze's stewardship was instrumental in guiding the community to its present dynamic and prosperous state; and

WHEREAS, Born January 2, 1913, in Irving to Charles Percy Schulze and Virginia Tucker Schulze, Mr. Schulze grew up in what is now the historic Heritage House on O'Connor Road; and

WHEREAS, Attaining an excellent education, Mr. Schulze attended grade school in Irving and later Holy Trinity School and Dallas Academy in the Oak Lawn area; in 1933, he graduated magna cum laude from St. Edward's University in Austin; and

WHEREAS, Mr. Schulze spent several years in Odessa and South Texas while working for Sun Oil Co.; he later returned to his boyhood home of Irving at the behest of his father, where he joined in the family business, Irving Lumber Co., the city's oldest mercantile establishment; and

WHEREAS, Involved in community governance, Mr. Schulze served on the Irving City Council and actively campaigned to annex adjacent areas and secure a home-rule charter for Irving, which promoted rapid growth and prosperity for his beloved city; ever extolling the virtues of Irving, Mr. Schulze served as chairman of the chamber of commerce in 1958; and

WHEREAS, This esteemed gentleman held a prominent role in the local business community, serving as a director of the Irving State Bank and the Irving Savings and Loan Association and chairman of the board of Irving's First Federal Savings and Loan; and

WHEREAS, Mr. Schulze was a man of deep and abiding faith, devoting more than 40 years as a member of the Serra Club of Dallas, which promotes and supports religious vocations, and co-founding the Serra Club at the University of Dallas; and

WHEREAS, His ecclesiastical efforts and selfless support of the Catholic faith were recognized in 1956, when Mr. Schulze was knighted by the pope and inducted into the Equestrian Order of the Holy Sepulchre of Jerusalem; he later was promoted to Knight Grand Cross; and

WHEREAS, A vital link with the origins and the development of the city of Irving has been broken with the passing of Charles P. Schulze, Jr., a curator of historic remembrance, a captain of commerce, and a servant in matters of the spirit who will not soon be forgotten; now, therefore, be it

RESOLVED, That the Senate of the 78th Texas Legislature hereby honor the life of Charles P. Schulze and extend sincere sympathy to his family: to his beloved wife of 65 years, Catherine O'Connell Schulze; to his sister-in-law, Nellie O'Connell; and to his other relatives and many friends; and, be it further

RESOLVED, That an official copy of this resolution be prepared for his family and that when the Texas Senate adjourns this day, it do so in memory of Charles Schulze, Jr.

HARRIS

